

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

SAGE TELECOM, INC.

Petition for arbitration of an interconnection agreement with Illinois Bell Telephone Company (SBC Illinois) under Section 252(b) of the Telecommunications Act of 1996.

) 03-0570

Chicago, Illinois  
October 23, 2003

Met, pursuant to notice.

BEFORE :

Mr. David Gilbert, Administrative Law Judge.

APPEARANCES:

MR. HENRY T. KELLY and  
MR. JOSEPH E. DONOVAN  
33 West Wacker  
Chicago, Illinois 60606  
for Sage Telecom;

MR. KARL B. ANDERSON  
225 West Randolph  
Floor 25-D  
Chicago, Illinois 60606  
for Illinois Bell Telephone Company;

MS. BRANDY BROWN and  
MR. MICHAEL LANNON  
160 North LaSalle Street  
Suite C-800  
Chicago, Illinois 60601  
for ICC staff.

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- direct</u>	<u>Re- cross</u>	<u>By Examiner</u>
MR. JAMES ZOLNIEREK	25	30 31 46 96			45
MR. ROMAN A. SMITH	149	153 167 209	215	237 245	167 220 244
MS. STEPHANIE G. TIMKO	248	277	333		

<u>APPLICANT'S</u>	<u>E X H I B I T S</u>	<u>In Evidence</u>
Staff	<u>For Identification</u>	
Exhibit 1.0	19	30
2.0	19	30
SBC Exhibits 1.0 and 1.1		152
Petitioner's Exhibit 1.0		250
Exhibits 2.0 and 2.0 P		276

SULLIVAN REPORTING COMPANY, by  
FRANCISCO E. CASTANEDA, CSR,  
License No. 084-004235

1                               (Whereupon, Staff  
2                               Exhibit Nos. 1.0 and 2.0  
3                               were marked for identification.)  
4           JUDGE GILBERT: Pursuant to the authority of  
5           the Illinois Commerce Commission, I now call  
6           Docket 03-0570.  
7                               If I could have the appearances for the  
8           record please, beginning with petitioner.  
9           MR. KELLY: Henry Kelly and Joseph Donovan  
10          with Kelley, Drye & Warren, 33 West Wacker,  
11          Chicago, Illinois 60606 appearing on behalf of  
12          Sage Telecom.  
13          MR. ANDERSON: Karl B. Anderson appearing on  
14          behalf of Illinois Bell Telephone Company, 225  
15          West Randolph, Floor 25-D, Chicago, Illinois  
16          60606.  
17          MR. LANNON: And appearing on behalf of the  
18          staff of the Illinois Commerce Commission, Brandy  
19          Brown and Michael Lannon, 160 North LaSalle  
20          Street, Suite C-800, Chicago, Illinois 60601.  
21          JUDGE GILBERT: Okay. When we stopped  
22          yesterday, the petitioner and respondent were

1 engaged in negotiations in hopes of settling  
2 disputed issues.

3 I was informed by e-mail this morning  
4 that parties were not able to achieve a  
5 settlement and so we're going forward today with  
6 evidentiary hearings.

7 I understand that there was a sub-issue,  
8 which I guess perhaps has been resolved -- but  
9 that the parties have achieved somebody of an  
10 agreement on that issue, assuming that other  
11 issues are decided in a certain fashion.

12 And perhaps, Mr. Kelly, you could  
13 describe that for the record.

14 MR. KELLY: Yes, your Honor. In light of  
15 Mr. Smith's revised direct testimony yesterday,  
16 let me explain Sage's position very, very  
17 briefly.

18 First of all, they believe that there  
19 should be no billing and collection of terms in  
20 an interconnection agreement. However, if the  
21 Commission finds that there should be some  
22 billing and collection terms, they are proposing

1       that Section 27.16 and Section 6 as set forth in  
2       the petition be the adopted language, and that no  
3       other additional appendices be adopted.

4               If the Commission then concludes that  
5       there should be additional billing and collection  
6       terms via an appendix also added to the  
7       agreement -- I'm sorry, to the interconnection  
8       agreement, they would propose Sage's Exhibit  
9       No. 3 to the petition with the -- to be included  
10      or revised to be included Option 1 in Mr. Smith's  
11      revised appendix.

12             That Option 1 contains some language  
13      with the toll billing exception. And,  
14      originally, in Ms. Timko's testimony, she had  
15      some problems with the language with respect to  
16      the toll billing exception appendix; and it's  
17      Sage's position that Mr. Smith's testimony  
18      addressed the problems that Sage had with the  
19      toll billing exception language in Option 1.

20             They prefer not to have Option 1 or the  
21      appendix or any billing and collection terms; but  
22      if the Commission compels that there be those

1 terms, Option 1 is acceptable as proposed by  
2 Mr. Smith.

3 JUDGE GILBERT: Okay. I have -- or I had  
4 marked yesterday the direct testimony of  
5 Mr. Smith. Is that the revised testimony or is  
6 there another document entitled revised  
7 testimony?

8 MR. ANDERSON: There's no additional revised.  
9 That's the latest copy.

10 JUDGE GILBERT: Okay. And, so, is what  
11 Mr. Kelly is referring to contained in this  
12 document?

13 MR. ANDERSON: What's contained in that  
14 document is -- as an attachment is the ABS  
15 billing appendix that we're proposing in this  
16 case, which contains, you know, three options.

17 There is an Option 1, which is an option  
18 for toll billing blocking. And I haven't  
19 discussed this with Mr. Kelly. My understanding  
20 of what he just said is that as the wording of  
21 Option 1 was revised in the appendix, which is  
22 attached to Mr. Smith's testimony, Sage is

1       satisfied that the terms -- satisfied with the  
2       terms and conditions of Option 1 as revised, if I  
3       understood what Mr. Kelly said.

4           MR. KELLY:   If the Commission concludes that  
5       there should be some appendix to the  
6       interconnection agreement, then Option 1 with  
7       Sage's proposed appendix is what we would  
8       advocate in our briefs.

9           To make it clear, what we'll probably do  
10       is attach a revised appendix that includes  
11       Option 1 in there and attach that to our brief.

12          JUDGE GILBERT:   I'm holding what has been  
13       marked SBC Revised Exhibit 1.0.   Now this has the  
14       revised appendix with respect to the Option 1; is  
15       that correct?

16          MR. KELLY:   I believe so, yes.

17          JUDGE GILBERT:   Mr. Anderson, yes?

18          MR. ANDERSON:   It's a revised appendix  
19       including Option 1 as revised.

20          JUDGE GILBERT:   Right.   And that's what you're  
21       referring to, Mr. Kelly?

22          MR. KELLY:   Yes, Option 1.   We oppose Option 2

1       and 3.

2           JUDGE GILBERT:   Right.   I understand that.   I  
3       just want to make sure I've got the right  
4       Option 1 in the right place so I can cite it if  
5       need be.

6           Okay.   All right.   And, Mr. Anderson,  
7       did you have any other remarks with respect to  
8       Mr. Kelly's understanding of what your  
9       non-dispute is?

10          MR. ANDERSON:   I have nothing further to add.

11          JUDGE GILBERT:   Okay.   Thank you.

12                 We're going to go a bit out of order.  
13       The order of business in an arbitration case is  
14       set by our rules, but I'm authorized to change  
15       that order of business if need be and because of  
16       staff witness Zolnierrek's scheduling needs, we're  
17       going to start with him.

18                 And I guess, Mr. Zolnierrek, you will be  
19       adopting Mr. Hoagg's testimony; so, in effect,  
20       you'll be taking in both Staff Exhibit 1 and  
21       Staff Exhibit 2, assuming there are no  
22       objections.   And then we'll, from there -- well,



1       we have to change what I was about to say.

2               I intended to say we would then go in  
3       the customarily order and return to petitioner,  
4       but we won't be doing that because I guess  
5       Mr. Smith will testify next because of his  
6       scheduling needs.

7       MR. ANDERSON:   Right.

8       JUDGE GILBERT:   Okay.   That's how we'll do it  
9       then.

10              All right.   We'll start with  
11       Mr. Zolnierenek.

12                      (Witness sworn.)

13       JUDGE GILBERT:   Mr. Lannon.

14                      JAMES ZOLNIEREK,  
15       having been called as a witness herein, after  
16       having been first duly sworn, was examined and  
17       testified as follows:

18                      DIRECT EXAMINATION

19                      BY

20                      MR. LANNON:

21       Q.   Would you please state your name for the  
22       record spelling your last name.

1           A.   James Zolnierrek, Z-o-l-n-i-e-r-e-k.

2           Q.   And by whom are you employed?

3           A.   The Illinois Commerce Commission.

4           Q.   And what's your position with the Illinois

5 Commerce Commission?

6           A.   I'm the manager of the policy department

7 in the public utility division -- I mean, in the

8 telecommunications division.

9           Q.   You have before you a document identified

10 as the verified statement of James Zolnierrek,

11 which consists of a cover page and 11 pages of

12 questions and answers; is that correct?

13          A.   Yes, it is.

14          Q.   This document is labeled Staff

15 Exhibit 1.0; is that correct?

16          A.   Yes, it is.

17          Q.   And there are no exhibits attached to

18 Staff Exhibit 1.0; is that correct?

19          A.   That is correct.

20          Q.   Was Staff Exhibit 1.0 prepared by you --

21          A.   Yes.

22          Q.   -- or under your direction?

1           A.    Yes, it was.

2           Q.    Are there any changes you would like to  
3           make today to Staff Exhibit 1.0?

4           A.    There are no changes.

5           Q.    If I were to ask you the same questions  
6           today that are contained in Staff Exhibit 1.0,  
7           would your answers remain the same?

8           A.    Yes, they would.

9           Q.    Okay.  You also have before you, I  
10          believe, a document identified as the direct  
11          testimony of Jeffrey H. Hoagg, which consists of  
12          a cover page and eight pages of questions and  
13          answers; is that correct?

14          A.    Yes, it is.

15          Q.    And this document is labeled Staff  
16          Exhibit 2.0; is that right?

17          A.    Yes, it is.

18          Q.    And there are no exhibits attached to that  
19          document either; are there?

20          A.    There are no exhibits.

21          Q.    Are you familiar with the contents of  
22          Staff Exhibit 2.0?

1           A.    Yes, I am.

2           Q.    And do you adopt today Staff Exhibit 2.0

3           as your own prefiled testimony?

4           A.    Yes, I do.

5           Q.    Are there any changes you would like to

6           make to Staff Exhibit 2.0?

7           A.    No, there are not.

8           Q.    If I were to ask you the same questions

9           today that are contained in Staff Exhibit 2.0,

10          would your answers remain the same?

11          A.    Apart from educational and background

12          information, yes.

13          MR. LANNON:   Staff now submits Staff

14          Exhibit 1.0 and Staff Exhibit 2.0 for admittance

15          into the record and tenders the witness,

16          Mr. Zolnierrek, for cross-examination.

17          JUDGE GILBERT:  Is there any objection to the

18          admission of either Staff 1.0 or Staff 2.0?

19          MR. ANDERSON:  No objection.

20          MR. DONOVAN:  Your Honor, I want to point out

21          in Exhibit 1.0, on Page 7 he makes

22          cross-reference to staff witness' testimony in

1 the bottom two lines.

2 MR. LANNON: Is that Page 7?

3 MR. DONOVAN: Page 7 of Exhibit 1.0, Staff

4 Witness Hoagg will evaluate the respective

5 proposals of the parties in addressing Sage

6 Issues 2.

7 MR. ANDERSON: Do you have a line number?

8 MR. DONOVAN: Line 141.

9 JUDGE GILBERT: Okay. That appears on Page 8

10 on my copy.

11 MR. LANNON: Yes. It's on Page 8 on mine too.

12 JUDGE GILBERT: All right. With respect to

13 the -- to what appears at Lines 141 and 2, what

14 is your concern?

15 MR. DONOVAN: I just point out that he's

16 making reference to Staff Witness Hoagg's

17 testimony, which, to my knowledge, he's

18 absorbing. So he's making reference to his --

19 I'm just pointing out that there's no longer a

20 Staff Witness Hoagg. And anyone who will review

21 the record in the future may be confused as to

22 where that may be.

1           MR. LANNON: Your Honor, perhaps we could  
2 change reference to Staff Exhibit 2.0.

3           MR. DONOVAN: That will be fair.

4           JUDGE GILBERT: That's fine.

5                    Okay. Mr. Kelly, any objection to the  
6 admission of Staff 1.0 or 2.0?

7           MR. DONOVAN: No, your Honor.

8           JUDGE GILBERT: Those are admitted .

9                               (Whereupon, Staff  
10                               Exhibit Nos. 1.0 and 2.0 were  
11                               admitted into evidence.)

12          JUDGE GILBERT: Dr. Zolnierrek is available for  
13 cross.

14          MR. ANDERSON: We have some brief cross. I  
15 don't know what order we --

16          MR. KELLY: Go ahead.

17                    CROSS-EXAMINATION

18                    BY

19                    MR. ANDERSON:

20          Q. Dr. Zolnierrek, please refer to Page 8 of  
21 Staff Exhibit 2.0.

22                    At Lines 171 and beginning at lines 175,

1       you reference what you refer to as "my are  
2       recommendations;" correct?

3       A.    Correct.

4       Q.    And just to make the record clear, you  
5       have adopted the testimony in Staff Exhibit 2.0  
6       and so all the recommendations discussed herein  
7       are your recommendations; is that correct?

8       A.    That is correct.

9       Q.    Okay.  With respect to the statements  
10      beginning at Lines 171 and 177, have you seen any  
11      persuasive evidence from Sage since you filed  
12      your testimony which would cause you to reexamine  
13      and adjust your recommendations?

14      A.    No, I have not.

15      MR. ANDERSON:  Thank you.  I have no further  
16      questions.

17      JUDGE GILBERT:  Okay.  Mr. Donovan.

18                    CROSS-EXAMINATION

19                    BY

20                    MR. DONOVAN:

21      Q.    Good morning, Mr. Zolnierrek.

22      A.    Good morning.

1           Q. In light of the fact that my Exhibit 1  
2           seems to have printed on different pages, I'll  
3           attempt to refer to line references to avoid  
4           confusion. But if you don't know where I'm  
5           referring to, please let me know and we'll  
6           clarify.

7                     Have you read the petition in the  
8           attached exhibits that were filed in this  
9           proceeding?

10          A. Yes, I have.

11          Q. Have you read Ms. Timko's direct and  
12          rebuttal testimony and their attached exhibits?

13          A. Yes, I have.

14          Q. Are you familiar with the contents  
15          therein?

16          A. Yes.

17          Q. Are you familiar with the Section 251 and  
18          252 interconnection agreement approval process?

19          A. Yes, I am.

20          Q. Have you ever been part of a proceeding  
21          related to the approval of an interconnection  
22          agreement at the Illinois Commerce Commission?



1           A.   Yes, I have.

2           Q.   Have you submitted testimony in those  
3           proceedings related to whether the Commission  
4           should approve those interconnection agreements?

5           A.   Yes, I have.

6           Q.   You would agree, would you not, that  
7           Section 252 that I referred to is part of Federal  
8           Telecommunications Act?

9           A.   There's a Section 252 in the  
10          Telecommunications Act, if that's the Section 252  
11          you're referring then, yes, I would agree that's  
12          the one.

13          Q.   The Section 251 and 252 that I'm referring  
14          to that govern the interconnection agreement  
15          approval process are part of the Federal  
16          Telecommunications Act; is that right?

17          A.   That's correct.  There is a Section 251,  
18          252 that govern that process.

19          Q.   And that is under those provisions that we  
20          are before the Illinois Commerce Commission  
21          today, to arbitrate the interconnection agreement  
22          at issue?

1           A.   It's my understanding that -- yes.

2           Q.   Okay.  So you would agree then that the  
3           interconnection agreement at issue here is  
4           subject to the terms of the Federal  
5           Telecommunications Act?

6           A.   Yes.

7           Q.   Thank you.

8                     Sage makes note in its petition -- makes  
9           reference to an FCC order adopted in 1986  
10          regarding whether billing and collection services  
11          should be deemed non-regulated under the Federal  
12          Telecommunications Act.  Does that sound familiar  
13          to you?

14          A.   Yes, I've read that testimony.

15          Q.   Have you reviewed the FCC order cited  
16          therein?

17          A.   Yes, I have.

18          Q.   And you're familiar with the terms of that  
19          order?

20          A.   Generally, not being a lawyer.

21          Q.   Understood.

22                     As an opinion witness on behalf of

1       staff, you've read that FCC order?

2           A.   Yes, I have.

3           Q.   And have you taken that FCC order into  
4       account when you drafted your recommendation in  
5       your testimony?

6           A.   As I think my testimony indicated, it was  
7       my opinion that both parties had agreed to  
8       include terms for billing and collection under  
9       the agreement, and that the disagreement was over  
10      the particular terms; so that it was my  
11      recommendation that the Commission should  
12      determine the terms of -- related to the billing  
13      and collection.

14          Q.   So the answer is, no, you did not take  
15      that order into account?

16          MR. LANNON:   Your Honor, I'm going to  
17      interject an objection.  It seems that counsel is  
18      asking this witness for a legal conclusion.

19          MR. DONOVAN:   I'm asking if this witness took  
20      an FCC order into account, not the terms of that  
21      FCC order.

22          THE WITNESS:   My recommendation was not based

1       on conclusions in that order.

2           JUDGE GILBERT:  I'm sorry, I didn't hear the  
3       answer.

4           THE WITNESS:  My recommendations were not  
5       based on the conclusions in that order.

6       BY MR. DONOVAN:

7           Q.  If you were to take that order, that FCC  
8       order into account, would your recommendations  
9       that the ICC assert -- that the ICC include  
10      billing and collection terms in the  
11      interconnection be modified?

12          MR. LANNON:  Your Honor, I'm going to make the  
13      same objection.  I believe that question calls  
14      for a legal conclusion.

15          MR. DONOVAN:  Your Honor, the witness has made  
16      a recommendation based upon, or perhaps not based  
17      upon, whether or not the FCC order was taken into  
18      account.  I think I have an ability to  
19      cross-examine him on what his opinions would be  
20      had he taken that order into account.

21          MR. ANDERSON:  Well, I guess I'm going to  
22      object because it's asking Dr. Zolnierenek to

1 address an issue that he did not address in his  
2 testimony, and it's cross going beyond the scope  
3 of his testimony.

4 If the staff had wished to present  
5 evidence or position the testimony regarding the  
6 effect of a particular decision, then staff could  
7 have done so and we would have had an opportunity  
8 to review that and respond appropriately.

9 MR. DONOVAN: Your Honor, he's testified today  
10 that he did not take that order into account in  
11 drafting his testimony. I believe that's within  
12 the scope of what I can proceed on.

13 JUDGE GILBERT: Okay. Before anyone else  
14 interjects, first let me say, by way of ground  
15 rules, I want to confine objections to counsel  
16 for the witness.

17 MR. ANDERSON: Okay.

18 JUDGE GILBERT: Which will, of course, apply  
19 in your case as well.

20 MR. ANDERSON: I understand.

21 JUDGE GILBERT: The question, as I understand  
22 it, irrespective of whether it concerns a legal

1 opinion is whether he would have taken -- had he  
2 taken something into account, what would have  
3 been the result of taking it into account? But  
4 he's told us he has not taken it into account.

5 So I don't see the usefulness of the  
6 question, and I will sustain the objection to it.

7 MR. DONOVAN: Very well.

8 BY MR. DONOVAN:

9 Q. Mr. Zolnierrek, irrespective of the FCC's  
10 order, do you have an opinion as to whether or  
11 not billing and collection terms should be  
12 included in the interconnection agreement?

13 MR. LANNON: I'm going to object. That's  
14 beyond the scope of his testimony.

15 MR. DONOVAN: Your Honor, if can I have one  
16 second to review the testimony.

17 Your Honor, on Line 106 of Exhibit 1,  
18 Mr. Zolnierrek recommends that the Commission  
19 order the parties to include in the  
20 interconnection agreement reasonable terms and  
21 conditions governing the parties, arrangements  
22 for the billing and collection and settlement of

1 charges for ABS traffic based upon the language  
2 in the interconnection agreement, the Article  
3 27.16.

4 My question dealt specifically with  
5 irrespective of whether the FCC has found the  
6 billing and collection as -- my question was  
7 whether he has an opinion as to whether it's  
8 appropriate to include billing and collection  
9 terms under the auspices of a 251, 252  
10 interconnection agreement.

11 JUDGE GILBERT: I'll overrule the objection.  
12 I think that's within the general boundaries of  
13 the testimony of Dr. Zolnierrek.

14 Go ahead.

15 THE WITNESS: It's my understanding that both  
16 parties included terms for billing and collection  
17 into the agreement. On that basis, if I were  
18 making a recommendation as to the Commission  
19 whether they should order both parties to remove  
20 that agreed-upon information, I would say, no,  
21 that it is -- there is nothing to my knowledge  
22 that requires the parties strip that information

1 out of the agreement

2 BY MR. DONOVAN:

3 Q. If the parties were to -- if the proposed  
4 agreement did not include Article 27.16, would it  
5 be appropriate then for the Illinois Commerce  
6 Commission to order billing and collection terms  
7 into an interconnection agreement?

8 A. I haven't fully investigated that  
9 particular consideration. It wasn't one that I  
10 felt was teed up in the proceeding.

11 Both parties had indicated in testimony  
12 that that particular terms and conditions for  
13 billing and collection were agreed upon and  
14 included. I didn't go back to figure out whether  
15 or not had the parties -- one of the parties  
16 requested to strip those out whether or not,  
17 legally, the Commission would be required to side  
18 with that party or not.

19 Based on nonlegal, I would say as a  
20 policy recommendation, subject again to the legal  
21 investigation that I don't know -- that I have  
22 not personally done, I would recommend that



1       those -- you know, again, conditional on that --  
2       be included, those terms and conditions.

3           Q.   So would you recommend that the terms and  
4       conditions be included in a 252 agreement?

5           A.   If one party is requesting that they be  
6       included, for policy reasons, I would recommend,  
7       unless I was in consultation with legal staff it  
8       was determined that legally it could not be  
9       included or should not be included.

10                   But to the extent one party asks for  
11       those to be in, as a policy matter, I would  
12       recommend that they be in.

13           Q.   And you make that recommendation in light  
14       of you having reviewed the FCC order that held  
15       that billing and collection services are not  
16       regulated?

17           MR. LANNON:  Objection.  I believe that  
18       question does go beyond the scope.  The witness  
19       has already stated he did -- none of his  
20       testimony that he's provided here was based upon  
21       that FCC order.

22           MR. DONOVAN:  But he did proffer a policy

1 recommendation in cross-examination just a moment  
2 ago that he would recommend that the billing and  
3 collection terms be included in an  
4 interconnection agreement.

5 And my follow-up question was, even so,  
6 in light of his having admittedly reviewed FCC  
7 order, my question goes to whether he took the  
8 FCC order into account in basing that policy  
9 recommendation.

10 MR. LANNON: Your Honor --

11 JUDGE GILBERT: Well, let me rule because I  
12 don't agree with you that it's beyond the scope,  
13 but I think you are correct, Mr. Lannon, in  
14 Mr. Zolnierrek's answer to that question  
15 previously was no, that he did not base his  
16 decision on the FCC order.

17 And I think he told you clearly in his  
18 answer that his answer was a policy answer apart  
19 from any legal assessment.

20 MR. DONOVAN: Let me try a little different  
21 tactic, your Honor.

22 BY MR. DONOVAN:

1           Q.   Perhaps you could tell me what that policy  
2   decision was based on?

3           A.   My opinion that this particular service at  
4   issue, the billing and collection of ABS calls  
5   could best be provisioned potentially in my view  
6   at no harm to any parties or consumers through an  
7   agreement in this particular format, in the 251,  
8   252 agreement.

9           Q.   So your policy recommendation is not  
10   necessarily based on statute or regulations or  
11   Commission orders, it's based on personal  
12   opinion?

13          A.   It's based on my opinion of -- that there  
14   is nothing in the statutes that would prohibit it  
15   from being in the -- I am not personally aware of  
16   anything in this statute or law that would  
17   prohibit that being in the agreement.

18                   And then based on that, it is based on  
19   my personal recommendation based on what I see  
20   as -- based on the evidence what would be best  
21   for consumers and the parties involved.

22          Q.   Conversely, are you aware of anything that

1 would compel a billing and collection agreement  
2 terms to be included in the interconnection  
3 agreement?

4 A. Public policy interest.

5 Q. Can you explain why you think it would be  
6 in the public policy interest?

7 A. From the information provided in the  
8 testimony and in the evidence, it appears to me  
9 that absent a workable agreement, that this  
10 service would be in jeopardy of disappearing.  
11 And my personal belief based on what I've seen in  
12 the evidence is that this service could be  
13 provided to Illinois consumers, it would be  
14 available to Illinois consumers, maybe something  
15 that is necessary for some Illinois consumers and  
16 potentially at no harm at all to the parties.

17 So it would be in the public policy  
18 interest to foster that service being provided.

19 JUDGE GILBERT: Just let me interrupt for a  
20 second.

21

22

1 EXAMINATION

2 BY

3 JUDGE GILBERT:

4 Q. Dr. Zolnierrek, when you refer to "this  
5 service," what are you talking about?

6 A. ABS, incollect calling.

7 Q. Irrespective of the carrier bringing in a  
8 call to, let's say, SBC in this case?

9 A. Right. For this to be service that's  
10 available, it's my understanding from the  
11 testimony and from responses to data requests  
12 that absent an agreement, in particular some of  
13 the agreements we recommend the Commission adopt  
14 here, that this service may not be a viable  
15 service.

16 With these recommendations, we may  
17 believe it would be a viable service that would  
18 be a benefit to the public, and we believe there  
19 would be very little harm to the parties  
20 involved.

21 Q. I understood that was your opinion. I was  
22 just clarifying what you meant by "this service."

1 And you mean all ABS service collectively then?

2 A. Right.

3 JUDGE GILBERT: Okay. That's all I need.

4 CONTINUED CROSS-EXAMINATION

5 BY

6 MR. DONOVAN:

7 Q. Is there anything that would prevent the  
8 parties from negotiating the terms of billing and  
9 collection for ABS services outside the scope of  
10 the 251, 252 interconnection agreement?

11 A. Not to my knowledge.

12 Q. If I understand your statements,  
13 Mr. Zolnierrek, you've indicated that you're  
14 concerned that if the terms of -- and correct me  
15 if I misstate it. I don't want to misstate your  
16 position.

17 You're concerned that if the terms are  
18 not incorporated with the interconnection  
19 agreement, the existence of ABS services is at  
20 jeopardy; is that correct?

21 A. I have to qualify this whole thing. To me  
22 this is all hypothetical because both parties

1       have -- so this is just in the event that one  
2       party hypothetically didn't want the terms and  
3       conditions in the agreement; that to strip those  
4       out for both parties would, in my opinion, put  
5       the service in jeopardy of being not provided  
6       because of that.

7           Q.   If it's your concern then that perhaps ABS  
8       services are at jeopardy and may not be provided  
9       in Illinois, is there anything in the Illinois  
10      code or statute that you're aware of that compels  
11      competitive local exchange carriers to provide  
12      ABS services?

13           MR. LANNON:  Objection, your Honor.  I believe  
14      that calls for a legal opinion.

15           MR. DONOVAN:  I think he's opened the door to  
16      that line of questioning by stating his opinion.

17           JUDGE GILBERT:  Well, he can answer that.

18           THE WITNESS:  Let me make sure I understand  
19      the question.  If this were -- if you're  
20      requesting to strip out all the terms and  
21      conditions of billing and collection from the  
22      agreement, is there anything -- are you asking in

1       that situation or asking me under the current  
2       situation that there are terms and conditions in  
3       the agreement and to clarify those or decide  
4       whether those conditions need to be clarified?

5       BY MR. DONOVAN:

6           Q.   It's my understanding your position is  
7       that if they're not included in the  
8       interconnection agreement, that there's a  
9       possibility that the ABS services may not be  
10      provided to Illinois end users.

11                But are you aware if there is any  
12      statutes or regulations that compel Sage or any  
13      other competitive local exchange carrier to  
14      provide ABS services?

15           A.   No, I am not aware of any that would  
16      compel them.

17           Q.   Thank you.

18                Can you explain to me, again, how you  
19      think ABS services would be in jeopardy.

20           A.   If my understanding the way the ABS  
21      service works is -- let's -- for example, one  
22      scenario is a collect call.  So just for the sake



1 of this situation, let's assume an SBC customer  
2 makes a collect call in to a Sage customer.

3 My understand is when the SBC customer  
4 calls, they say, you know, We'd like to bill the  
5 charges to the Sage customer, and the Sage  
6 customer accepts those charges.

7 Now, I believe the dispute before us is  
8 who should bill that carrier, who accepts  
9 responsibility for actually billing and  
10 collecting and where financial responsibility  
11 lies.

12 It's my understanding that Sage is  
13 proposing that SBC directly bill the customer,  
14 but in response to Data Request 14 that staff  
15 sent to Sage -- or -- Sage, Sage responded that  
16 it is too costly to bill and collect -- it would  
17 be too costly for Sage to bill and collect a  
18 customer in the manner that SBC would need to do  
19 in that situation.

20 So my understanding is the call -- sort  
21 of projecting from Sage to SBC, SBC may not be  
22 able to afford to bill and collect for that call.

1           The service -- then either they would  
2     have to pay for the service out of their own  
3     corporate funds or the service goes away, which I  
4     would assume it would be in jeopardy of going  
5     away.

6           Q.   But you do admit that SBC would be able to  
7     bill the end user for the ABS call?

8           A.   Technically?  I mean --

9           Q.   Is that -- to your knowledge, is SBC  
10    technically capable of billing the end user  
11    directly for ABS services?

12          A.   It's my understanding from the testimony  
13    that not without some information provided by  
14    Sage, the customer's address and so forth.

15          Q.   So if Sage provided that information to  
16    SBC, there's nothing that would prevent SBC from  
17    billing directly to the end user for ABS  
18    services?

19          A.   My understanding, there's no technical  
20    consideration; but, I mean, my understanding  
21    boils down to financial considerations.

22          Q.   So your opinion then, is that a company

1       shouldn't be forced to lose money as a result of  
2       billing ABS services to end users?

3           MR. LANNON:   I'm going to object.   That's  
4       beyond the scope of his testimony.

5           MR. DONOVAN:   Well, he's presented testimony  
6       that it's his understanding that SBC is put in  
7       the financial harm by having direct bill the end  
8       user.

9                   My question is, does that apply just to  
10       SBC or does that apply to who's put in financial  
11       jeopardy as a result of billing the end user?

12           JUDGE GILBERT:   Well, I'll overrule that  
13       particular objection.

14           THE WITNESS:   It's my understanding, based  
15       again on Sage's response, that in that particular  
16       instance it may be infeasible to provide the  
17       service at a profit.   And if that was the case,  
18       then the service would be in jeopardy.

19                   Now, again, I think staff indicated in  
20       their testimony if Sage were to give us some  
21       indication that they would be put in jeopardy by  
22       the burden being placed on them, that we take

1       that into consideration also.

2               I mean, it's not just that necessarily  
3       there's a small amount of money lost. Perhaps  
4       they can recover the money through, you know,  
5       markups or the prices for incollect calls.

6               The question is, is the service overall  
7       in jeopardy? Is there no way to profitably  
8       provide it if one particular party or the other  
9       has to do the billing?

10              From the evidence, it looks to us -- or  
11       it looks to me, like if Sage does the billing,  
12       the service can be provided profitably that  
13       there's a potential that no party will lose any  
14       money.

15              If the billing forced on SBC, it looks  
16       from the evidence -- and, again, you know, this  
17       is subject to further evidence that's provided  
18       that it's not the case -- but it looks to us from  
19       the evidence that it could not be provided by SBC  
20       profitably and the service would go away.

21       BY MR. DONOVAN:

22              Q. If the evidence indicates that the ABS --

1        billing of ABS services from Sage cannot be done  
2        profitably, should Sage still be compelled to  
3        bill and collect on behalf of SBC?

4            A.    Can you repeat the question, please.

5            Q.    If the evidence indicates that the billing  
6        and collection for ABS services on behalf of Sage  
7        rather than SBC cannot be done profitably to  
8        Sage, is it still your opinion that Sage should  
9        bill on behalf of SBC?

10           MR. LANNON:    Is that a hypothetical question?

11           MR. DONOVAN:    I believe we've actually -- we  
12        have provided prefiled testimony, we'll submit to  
13        the record evidence, to the cost incurred by Sage  
14        and the amount of payment -- or credit they  
15        receive from SBC.

16           THE WITNESS:    That's -- I have to admit, when  
17        reading the testimony, it was a little unclear as  
18        to Sage's position there.

19                    It's my understanding that Sage has  
20        agreed and both parties have agreed that Sage  
21        will actually recover some funds from SBC for the  
22        billing and collection they do.

1           It's my understanding Sage agreed to a  
2     particular amount and that Sage is now saying  
3     that that amount is insufficient to recover the  
4     costs for bill and collection.

5     BY MR. DONOVAN:

6           Q.   Is it your understanding that that  
7     position -- first of all, are you referring to  
8     the billing and collection fee?

9           A.   Right. The .03, I believe, that is  
10    included in the agreed-upon appendix.

11          Q.   Is it your understanding that that Sage  
12    position to accept that was based upon getting  
13    full recourse for uncollectibles?

14          A.   I don't know. Those are the terms and  
15    conditions that were not specified by the  
16    parties, that SBC would like specified, that I  
17    believe Sage proposed not be specified.

18          Q.   I believe in Article 6, Sage has proposed  
19    adding a sentence that says CLEC, meaning Sage,  
20    will not be liable for ABS services. Is that  
21    your understanding?

22          A.   I'm somewhat confused by that. My

1 understanding is Sage wants the Commission to  
2 approve the negotiated portion of the agreement  
3 and nothing else.

4 But that's inconsistent with -- there is  
5 another sentence that while they would like to  
6 add an additional sentence to that agreed part --  
7 maybe you could clarify for me which we're to  
8 evaluate.

9 It's been difficult for us to figure out  
10 which, frankly, what Sage's position is, what  
11 they are asking us to evaluate as the proposal.

12 Q. And that's based upon your review of the  
13 petition and the testimony?

14 A. Yes.

15 Q. Going back then a bit, I'm not sure I  
16 understand your question with respect to the  
17 impact of Sage being able to provide billing and  
18 collection service at a profit.

19 If Sage -- if it can be shown in the  
20 evidence that Sage cannot provide billing and  
21 collection services at a profit, can you restate  
22 your response to whether or not they should still

1 be compelled to provide billing and collection  
2 services for ABS products?

3 A. Well, I mean, whether or not they could  
4 provide it at a profit, I think, depends on the  
5 terms and conditions of what goes into the  
6 appendix, if there is an appendix.

7 The evidence that I've made my  
8 recommendations upon is SBC has said when they  
9 are billing and collecting and going and doing  
10 this from their own customers, they are able to  
11 collect 15 to 20 percent.

12 It's my understanding SBC has, in their  
13 proposal, allowed Sage to collect even less than  
14 that.

15 I don't believe there is any evidence in  
16 the record indicating what Sage is able to  
17 collect from their customers. I know they can't  
18 give evidence for Illinois because they're not  
19 here but from other states.

20 We know what -- in the evidence, there  
21 was some indication of what was paid back to SBC,  
22 but there's no indication of whether that was 100



1     percent of what was collected. I know Sage's  
2     proposal, in the event there is an appendix, is  
3     that they only provide, of the amount collected,  
4     50 percent back to SBC. And it's not clear  
5     whether that's what's done in other states.

6             So when SBC says that they only collect  
7     5 to 50 percent from Sage in other states,  
8     whether they're only getting a portion of what  
9     Sage actually collects or Sage is actually able  
10    to collect more.

11            So the only evidence I see -- and we  
12    have some questions as to what that evidence is  
13    based on -- is that SBC itself collects 15 to 20  
14    percent -- or is unable to collect 15 to 20  
15    percent of incollect calling fees. And based on  
16    that and their offer that Sage could be allowed  
17    much higher levels of uncollectibles, it appears  
18    that Sage could feasibly provide the service  
19    profitably.

20            But, again, if we had more evidence --

21            Q. Are you aware if a CLEC is, for instance,  
22    Sage, is able to mark up an SBC rated incollect

1 call that it received on the DUF?

2 By mark up, I mean increase the charges  
3 as to the end user.

4 A. I know that was introduced as a proposal  
5 late in the testimony, and I think that would  
6 have to be something that would be negotiated by  
7 the parties, or -- I mean, I'm not sure that any  
8 parties put that proposal before us as a  
9 recommended solution.

10 Q. So under all of the options before the  
11 Commission right now including SBC's revised  
12 13-State ABS agreement, there is nothing that  
13 allows Sage to mark up the SBC rated incollect  
14 call?

15 A. But there's nothing out -- also that I  
16 think that is in any of these proposed agreements  
17 that doesn't allow them to -- that prohibits it.  
18 It doesn't address it either way.

19 Q. Is there a law or Commission rule that  
20 you're aware of that prohibits it?

21 A. Specifically, I'm not aware of one.

22 Q. Thank you.

1                   Wouldn't you agree then that the ABS  
2           services that SBC flows through to Sage for  
3           billing are the SBC tariffed rates?

4           A.   No, I would not agree that in every  
5           instance that's the case.

6           Q.   Can you explain that.

7                   Well, let me ask you a more precise  
8           question.

9                   Under the terms of, for instance, the  
10          13-State ABS appendix, are there terms in there  
11          that you're aware of that require SBC to flow  
12          through to Sage its tariff rates and nothing else  
13          for the ABS services?

14          A.   I would say that's incorrect. That's not  
15          my understanding. My understanding is SBC will  
16          also pass third-party call-through, which they  
17          don't necessarily have a tariff for.

18          Q.   But the third-party would have a tariff  
19          for those rates; correct?

20          A.   Frankly, I don't know that that would be  
21          the case. That would involve potentially calls  
22          from other jurisdictions, and I'm not sure if,

1       for example, Bell South would necessarily have to  
2       have a tariff filed.

3           Q.   On Line 111 of your Exhibit 1, you have a  
4       statement, As a matter of good policy, the  
5       Commission should not force SBC to accept only  
6       mutually agreeable rates, terms and conditions  
7       for incollect billing and collection.

8                   Do you see that statement?

9           A.   Yes.

10          Q.   I'll be honest with you, I've read that at  
11       least a dozen times and I'm still not sure what  
12       you're saying in that sentence. Can you explain  
13       that to me.

14          MR. ANDERSON: Before we go forward, I'm  
15       sorry, I missed the reference.

16          MR. DONOVAN: Line 111 of his Exhibit 1.

17          MR. ANDERSON: Thank you.

18          THE WITNESS: It's my understanding that both  
19       parties agreed to certain terms and conditions  
20       for the provision of ABS service, and those were  
21       in Section 27 of the agreement.

22                   With Exhibit 1, my testimony with

1       respect to Issue 1, was given that both parties  
2       agree that certain terms and conditions for this  
3       service would be in the agreement, the Commission  
4       should consider if one of the parties does not  
5       believe that's a complete set of rates, terms and  
6       conditions and shall consider either any of the  
7       following options, one, that there need be no  
8       further rates, terms and conditions associated  
9       with that, what was proposed by both -- and  
10      agreed to by both parties. Or that either the  
11      parties may have an extension with clarification  
12      as to further rates, terms and conditions.

13           JUDGE GILBERT: Let me interject then because  
14      I share Mr. Donovan's confusion about that  
15      sentence starting at Line 111.

16                    Would it clarify your meaning if the  
17      word only were moved slightly to the left and  
18      placed in front of the acronym "SBC"?

19           THE WITNESS: I'm not sure it would. My --  
20      what I was trying to convey is, carriers go into  
21      negotiations and as they go through the  
22      negotiations, they may agree to particular points

1       and have disputes over clarifications of those  
2       points.

3               So parties might agree in principle to  
4       particular terms and conditions and disagree over  
5       specifics on whether they need to be clarified or  
6       how to clarify them. So in a sense, the entire  
7       agreement isn't agreed-upon.

8               And I believe that's my understanding of  
9       SBC's position here, is while they agreed to the  
10      parts that were in Section 27, they could not  
11      agree to those parts if there was not some  
12      additional clarification.

13              So they didn't agree to the total terms  
14      and conditions for ABS; and if there were going  
15      to be no agreement on the extension, then they  
16      didn't agree to the terms in 27. That was my  
17      understanding.

18              JUDGE GILBERT: Well -- and thank you,  
19      Mr. Donovan, for your patience during this  
20      interruption.

21              Reading the sentence on its face, it  
22      just doesn't convey what you just said and it

1       actually sounds a bit silly because it's saying,  
2       Should not force SBC to accept only mutually  
3       agreeable rates.

4               Well, if they're mutually agreeable,  
5       obviously, it's not just SBC that's being forced  
6       to accept them. Everyone is accepting them.

7       THE WITNESS: And I apologize if I was not  
8       clear. The intent was -- and I can give you an  
9       example.

10              Say the parties agreed that, yes, they  
11       do jointly provide a service, but clearly the  
12       joint provision of that service depends on the  
13       rates and financial terms between the parties.

14              So one party says, Yes, we'd like to  
15       provide -- yes, we'd like to provide it, but we  
16       can't agree on the rates. Then there is really  
17       no agreement.

18              So perhaps mutually agreeable was too  
19       strong. I mean, it's hard to delineate because  
20       both parties apparently want to provide the  
21       service. They just haven't agreed to the terms.  
22       And if they can't agree to the terms, then I

1       would say it's possible that parties don't agree  
2       to provide the service.

3               So, you know, maybe it's not mutually  
4       agreed but that language is not in dispute  
5       provided there can be some clarification.

6       JUDGE GILBERT: Okay. Well, I think the only  
7       real penalty for you here is that I, frankly,  
8       don't see from that sentence what you've just  
9       told me. Although, I fully understand what you  
10      just told me.

11             So whatever it was you meant to convey,  
12      I assume it's what you just said. I don't find  
13      conveyed by that sentence; but, anyway,  
14      Mr. Donovan, go ahead.

15      BY MR. DONOVAN:

16             Q. Mr. Zolnierrek, wouldn't the converse be  
17      true?

18             As a matter of good policy, the  
19      Commission should not force Sage to accept terms  
20      on the example you just gave?

21             A. Yes.

22             Q. So -- but isn't that really what happened



1       here, Sage was unable to accept the terms of ABS  
2       appendix as proposed by FCC -- by SBC? Shouldn't  
3       we be able then to withdraw our 27.16 as part of  
4       the negotiation process?

5           A.   I would think you may want to do that; but  
6       to my knowledge, Sage has not proposed to do  
7       that.

8                   I mean, that goes along with what I was  
9       saying, if the parties don't agree on how to  
10      provide this service, just because they've moved  
11      to some level of agreement on parts of it, if  
12      they can't agree to the whole thing, then the  
13      service may not be provided.

14          Q.   You indicated that you reviewed  
15      Ms. Timko's rebuttal testimony and the exhibits  
16      attached thereto. One of those exhibits was a  
17      billing and collection agreement entered into  
18      between SBC Illinois and its affiliates.

19                  Do you recall reviewing that?

20          A.   Briefly, not in detail, honestly.

21          MR. DONOVAN: Your Honor, we haven't yet  
22      submitted that into evidence. I don't intend to

1 submit it as a cross exhibit, as we're going to  
2 submit it into evidence later today. But if you  
3 feel that I need to submit it, I will.

4 BY MR. DONOVAN:

5 Q. Do you have a copy of the agreement  
6 between -- for billing and collection services  
7 between SBC Advance Solutions, Inc., and a number  
8 of other Ameritech companies and Ameritech  
9 Illinois?

10 It was attached, I believe, as Exhibit A  
11 or B to Ms. Timko's rebuttal testimony.

12 A. Let me make sure.

13 Q. I have a copy for you because we're going  
14 to be looking at specific terms in there.

15 MR. DONOVAN: Your Honor do you require a  
16 copy?

17 JUDGE GILBERT: Yes.

18 BY MR. DONOVAN:

19 Q. Mr. Zolnierrek I ask you to refer to  
20 section --

21 (Whereupon, a discussion  
22 was had off the record.)

1 JUDGE GILBERT: Let me make clear for the  
2 record what document we're talking about. As of  
3 now, this is marked as Exhibit A to Mr. Timko's  
4 rebuttal testimony?

5 MR. DONOVAN: That's correct.

6 JUDGE GILBERT: And do we have an exhibit  
7 number yet for that testimony?

8 MR. DONOVAN: If you intend to individually  
9 label the exhibits, I guess it would be 2.1.  
10 Ms. Timko's rebuttal would be 2, 2.1 of  
11 Exhibit A, 2.2 and 2.3 for B and C.

12 JUDGE GILBERT: Okay. What's going to be 1.0?

13 MR. DONOVAN: Her direct testimony that was  
14 filed with the petition.

15 JUDGE GILBERT: Oh, so you're saying this  
16 Exhibit A would be, you're proposing, 2.1?

17 MR. DONOVAN: Correct.

18 JUDGE GILBERT: Okay. What I want to do is I  
19 just want to make that Attachment A to the 2.0.

20 MR. DONOVAN: That's fine. And we'll do that  
21 with all the exhibits, just do them as  
22 Attachment A to Exhibit 1 or 2.

1 JUDGE GILBERT: Right. Okay.

2 MR. LANNON: Excuse me.

3 JUDGE GILBERT: Go ahead.

4 MR. LANNON: I'd like to make a general  
5 objection to, you know, specific questions --

6 JUDGE GILBERT: Okay. Before you do that, I  
7 just want to make sure we're talking about -- I  
8 want to clearly identify what we're talking  
9 about.

10 And this is an agreement for billing and  
11 collection services which is right now labeled as  
12 Exhibit A attached to the rebuttal testimony of  
13 Ms. Timko, which will later be marked as Sage  
14 Exhibit 2.0. and so this will be an attachment  
15 made to that exhibit.

16 All right. Go ahead, Mr. Lannon.

17 MR. LANNON: My objection would be that we  
18 received this -- Ms. Timko's rebuttal testimony  
19 with three or four agreements attached to it.  
20 Maybe it's just three, A, B and C, I think.

21 And we received that Wednesday night  
22 somewhat late. Mr. Zolnierrek had to travel very

1       early the next morning.  He's already testified  
2       that he just briefly reviewed this.  He's  
3       probably not familiar with the details of this  
4       agreement.

5           MR. DONOVAN:  He has testified -- well, first  
6       of all, let me clarify, it was sent -- the  
7       testimony was sent out -- I believe it was  
8       Tuesday, the due date, late though it may have  
9       been for e-docket purposes.

10           And, frankly, that's the schedule that  
11       all the parties agreed upon.  There's not a lot I  
12       could have done about that.  I would also  
13       indicate, your Honor, in discussions with Staff  
14       Witness Hoagg -- or, excuse me, Staff Member  
15       Hoagg -- strike that.

16           I would also point out, your Honor, he's  
17       already indicated that he has read and is  
18       familiar with the terms of Ms. Timko's rebuttal  
19       testimony and the exhibits attached thereto.

20           MR. ANDERSON:  I don't know whether there's  
21       anything to object to, and I want to respect the  
22       ground rules, so I will wait.  But to the extent

1       that there's no foundation laid for this witness  
2       to cross-examine this witness, and it's moved for  
3       admission, we will object and we also may have  
4       objections at the time that Ms. Timko testifies  
5       as to putting it through Ms. Timko.

6               But without knowing what questions are  
7       going to be asked, I can't say anything further.

8       JUDGE GILBERT:   Okay.   With respect to its  
9       foundation, I'm taking for now the good faith  
10      representation of Sage's counsel if this will be  
11      offered.   And if it ultimately were not offered,  
12      then I may have to strike everything.

13      MR. DONOVAN:   Fair enough, your Honor.

14      JUDGE GILBERT:   Mr. Lannon, I don't know if  
15      really what you're concerned about quite rises to  
16      the level of an objection because as Mr. Donovan  
17      pointed out, the document was filed according to  
18      our schedule, albeit a half hour late.   You've  
19      already dealt with that.

20      MR. LANNON:   Yeah.

21      JUDGE GILBERT:   Separate from that is the  
22      point of whether Dr. Zolnierек has, in fact,

1       adequately reviewed this in order to testify.

2               You're free to say you haven't and then  
3       that sort of ends the matter, I guess. But if  
4       you -- but that's your call. I mean, that's the  
5       answer you'll give under oath to his question.

6               You have already answered the question.  
7       Are you going to let that answer stand?

8       THE WITNESS:   (Nodding head up and down).

9       JUDGE GILBERT:  Well, then he can answer the  
10      question.

11      MR. DONOVAN:  Thank you.

12      MR. LANNON:  Your Honor, can I make one  
13      additional objection?

14      JUDGE GILBERT:  Sure.

15      MR. LANNON:  And that's relevance. This  
16      agreement, Exhibit A to Ms. Timko's rebuttal, as  
17      I understand it, is not even a 252 type  
18      agreement; this is a business to business type of  
19      agreement that the Commission doesn't regulate in  
20      any way.

21              I just don't see what the relevance of  
22      this agreement in Exhibit A has to any of the

1 issues in front of the Commission in this  
2 proceeding.

3 JUDGE GILBERT: Well, that might be premature.  
4 The relevance of the agreement probably isn't the  
5 point. The relevance of whatever questions are  
6 propound based on that agreement would be the  
7 point. So let's see where he's going.

8 BY MR. DONOVAN:

9 Q. Well, my first question, actually,  
10 Mr. Lannon led into and that is to  
11 Mr. Zolnierrek's knowledge whether that agreement  
12 has ever been proffered to the Commission for  
13 approval as an interconnection agreement?

14 A. Not to my knowledge.

15 Q. Very well.

16 I would point your attention then to, I  
17 believe, Page 7 which is 5.4.6 -- 5.4.6.

18 First of all, to understand your  
19 position -- well, let me let you read that  
20 clause.

21 A. I've read it.

22 Q. If I understand your position kind of from



1 a 5,000-foot view, it's your position that if  
2 terms and conditions for billing and collection  
3 are to be included in interconnection agreement,  
4 that the terms and conditions contained in SBC's  
5 proposed ABS appendix are appropriate; is that  
6 correct?

7 A. Under the current circumstances.

8 Q. Under the current circumstances.

9 A. And given -- I mean, given the evidence  
10 that I've looked at in terms of what Sage has  
11 said and what SBC has said about the relationship  
12 between them in other states and how this  
13 relationship works.

14 Just let me be clear that I didn't mean  
15 that this could not be a business to business  
16 relationship that could work with carriers  
17 outside of 251, 252 agreement.

18 Q. And part of the terms of ABS appendix that  
19 SBC has proposed is that SBC will pass through  
20 third-party calls to Sage for billing; is that  
21 correct?

22 A. In this proceeding?

1                   Yes.

2           Q.   In this proceeding, yes.

3                   Okay.  So -- can you explain briefly, so  
4   the record is clear what your understanding of a  
5   third-party call is.

6           A.   My understanding -- one example of a  
7   third-party call is, for example, a customer  
8   traveling in Bell South's territory makes a  
9   collect call in Bell South's territory and says,  
10   I would like that billed to my home phone and I'm  
11   a Sage customer in Illinois.

12                   In that case, Bell South and SBC may  
13   have an agreement when Bell South sends the bill  
14   to SBC and SBC passes it on to Sage and says,  
15   Your customer has elected to receive this call  
16   and agreed to pay for it, collect for it please.

17           Q.   And it could also be that Bell South and  
18   Sage have entered into an agreement where Bell  
19   South will contact Sage to get customer  
20   information and bill the end user; correct?

21           A.   It could be, yes.

22           Q.   Thank you.

1                   Turning to 5.4.6, it reads SBC Telco and  
2   I would allude -- or I believe SBC Telco under  
3   the terms of this agreement refers to SBC  
4   Illinois' local exchange operations?

5       A.   I believe it --

6       Q.   We can go through the record and clarify  
7   that if you don't take my word for it.

8       A.   Well, apparently it refers to more than  
9   just SBC Illinois.

10       MR. LANNON:   Your Honor, I'm going to  
11   interject another objection.   All questions  
12   relating to document are well beyond the scope of  
13   this witness' testimony.

14       MR. DONOVAN:   They are not, your Honor.   He's  
15   recommended that SBC's proposed ABS terms and  
16   conditions are appropriate for adoption in this  
17   proceeding -- unless Sage comes forward with some  
18   additional evidence, I believe that allows me the  
19   opportunity to compare what SBC -- the terms of  
20   ABS that SBC has proposed with the terms that SBC  
21   has entered into with its affiliate for billing  
22   and collections of the same services.

1 JUDGE GILBERT: All right.

2 MR. DONOVAN: And to find out if staff believe  
3 that the terms and conditions of affiliate  
4 contract are more appropriate than the ABC  
5 appendix.

6 JUDGE GILBERT: Well, I'll overrule the  
7 objection again. It seems premature. I want to  
8 hear specific questions and we'll either  
9 specifically tie those to this case or we won't.

10 MR. DONOVAN: Okay.

11 BY MR. DONOVAN:

12 Q. Turning to 5.4.6 SBC Telco will return to  
13 the customer messages that are billed to an end  
14 user that has elected a local service provider  
15 other than SBC Telco.

16 What's your interpretation of that? Is  
17 that to be that SBC Telco will not pass through  
18 third-party calls to the customer?

19 Let me turn that around.

20 The SBC will not pass through to the  
21 other local exchange service customer messages  
22 billed -- strike that. Okay. Let me start over

1       again.

2               Does that section indicate that SBC  
3       Illinois will not pass through third-party  
4       charges to local exchange service providers other  
5       than SBC Telco?

6       A.   I would have to go back and review the  
7       context for that specific question.

8               On its face it looks to me that if  
9       customer -- I'm assuming here, refers to another  
10      carrier -- passes and presumably one of the  
11      carriers on the front, SBC Advance Solutions,  
12      AADS, so on, they pass a message to SBC Telco and  
13      it's not an SBC Telco customer that accepted, for  
14      example, the collect charges that SBC would  
15      return that to AADS or ASI, whoever it passed to.

16      Q.   Okay.

17      A.   That's my understanding.  But, again, just  
18      from only 5.4.6.  I don't know if anything else  
19      modifies it or changes that.

20      Q.   Okay.  Fair enough.

21              In comparison then to the 13-State ABS  
22      appendix, SBC Illinois will pass through those

1       third-party calls; correct?

2           A.   In this particular circumstance?  I

3       would -- it's my understanding that they would

4       not.

5           Q.   Under the ABS appendix proposed by SBC in

6       this proceeding?

7           MR. LANNON:  Can you give us a reference to

8       where in that appendix you're talking about?

9           THE WITNESS:  I may be misunderstanding your

10      question.

11      BY MR. DONOVAN:

12           Q.   All right.  Do you have a copy of the ABS

13      appendix in front of you?  The one that was

14      attached to the petition filed in this

15      proceeding.

16           JUDGE GILBERT:  What exhibit number was that?

17           MR. DONOVAN:  That is Exhibit 3 to the

18      petition, your Honor.

19           THE WITNESS:  Exhibit 3 or Exhibit 10?

20           MR. DONOVAN:  Excuse me, Exhibit 10.

21      BY MR. DONOVAN:

22           Q.   Do you have that with you?

1           A.   Yes.   We're referring to the original, not  
2   the revised?

3           Q.   Correct.

4           A.   Yes.

5           Q.   Can you please turn to Section 2.3  
6   referred to under the caption Option 2, CLEC  
7   responsible for ABS traffic.

8           A.   Okay.   I'm there.

9           Q.   On Line 5 there's a sentence that starts,  
10   CLECs will be responsible.   That sentence reads,  
11   CLECs will be responsible for 100 percent, paren,  
12   100 percent, end parens, of any ABS charges and  
13   applicable taxes passed through SBC 13-State by a  
14   third-party LEC that is included in a DUF  
15   transmission.

16                   Have you read that sentence?

17           MR. ANDERSON:   May I interject here?   I just  
18   want to clarify.   You are not looking at the  
19   revised appendix.   That was one of the specific  
20   changes we made.

21                   Perhaps if you ask questions regarding  
22   the revised appendix, that would be more

1       appropriate.

2               If you need a copy, I have an extra

3       copy.  It's attached to Mr. Smith's.

4       MR. DONOVAN:  Okay.  Is it counsel's position

5       that SBC is no longer going to pass through?

6       MR. KELLY:  No, he just wants you to refer to

7       the --

8       JUDGE GILBERT:  We're just talking about

9       documents now.  We're just identifying documents.

10              All right.  What I was handed by

11       Mr. Donovan and the document from which he read

12       is marked Exhibit 10 and that was Exhibit 10 to

13       the petition for arbitration.  That's correct,

14       isn't it?

15       MR. KELLY:  Yes.

16       JUDGE GILBERT:  Now, Mr. Anderson, where is

17       the document you're now referring to?

18       MR. ANDERSON:  It's the attachment to

19       Mr. Smith's testimony, which is the ABS appendix

20       as it was revised.

21       JUDGE GILBERT:  Okay.  Could you show me a

22       copy of that.



1           MR. ANDERSON:   Sure.   And I've got the red  
2   line copy so that you can see the sentence that  
3   Mr. Donovan read was red-lined out of the --

4           MR. DONOVAN:   Your Honor, we'll use the  
5   version that -- sorry, I didn't mean to add to  
6   your confusion.   We'll use the red line version  
7   that counsel for SBC is referring to.

8           JUDGE GILBERT:   Okay.   I'm just trying to find  
9   it to make sure I'm looking at the right  
10   document.

11

12   BY MR. DONOVAN:

13           Q.   Jim, do you have a copy now?

14           A.   Yes, I have a copy of the revised.

15                               (Whereupon, a discussion  
16                               was had off the record.)

17   BY MR. DONOVAN:

18           Q.   Mr. Zolnierrek, have you had an opportunity  
19   to review the red line version of Section 2.2,  
20   Option 1 CLEC blocking for ABS traffic?

21           MR. ANDERSON:   2.2?   Sorry to interrupt.   I do  
22   have a copy.

1           MR. DONOVAN:   Thank you.

2           MR. LANNON:   Excuse me.

3           MS. BROWN:   Staff doesn't --

4           JUDGE GILBERT:   Start that question over,  
5           please.

6           BY MR. DONOVAN:

7           Q.   Mr. Zolnierrek, have you had an opportunity  
8           to review the red line version attached to  
9           Mr. Roman Smith's prefiled -- revised direct  
10          testimony of the ABS appendix?   Do you have that  
11          before you?

12          A.   2.2 you said?

13          Q.   Section 2.2 specifically, yes.

14          A.   Yes.

15          Q.   And the first sentence there reads, CLEC  
16          is not responsible for charges for ABS traffic  
17          that is originated on SBC's 13-State Network or  
18          originated by a third-party LEC to CLECs that are  
19          included in a DUF transmission provided; however,  
20          that CLEC must request toll blocking exception,  
21          parens, TBE, end parens, blocking for all its  
22          UNE-P end users.

1                   Do you read that?

2           A.   Yes.

3           Q.   So it would appear that third-party  
4   billing would be passed through under Option 1  
5   if, and if, Sage or another CLEC subject to its  
6   terms do not provide TBE, toll blocking  
7   exception?

8           MR. ANDERSON:  I apologize, but I just want to  
9   make clear, questions about Option 1; and going  
10   to Option 1, I thought that was one of the issues  
11   we narrowed.

12                   Before the start of this proceeding,  
13   Mr. Kelly indicated they had no problems with  
14   Option 1 --

15           MR. KELLY:  If --

16           MR. ANDERSON:  -- including these provisions  
17   as applied.

18                   So -- I mean, I guess I just ask for  
19   that clarification.  We're going down the road of  
20   cross-examining witnesses about terms and  
21   conditions of an option that the parties all  
22   agree on, and I'm not sure why we're doing that.

1           MR. KELLY:  If I might just clarify.  Option 1  
2           is acceptable if the Commission adopts Sage's  
3           Exhibit 3 to the petition, proposed ABS appendix.

4           JUDGE GILBERT:  All right.  And I didn't  
5           necessarily understand the question as it  
6           challenged Option 1 but as a reference to  
7           Option 1 and asking the witnesses understanding  
8           and asking what the witness believes to be the  
9           implications of Option 1.

10          MR. DONOVAN:  And then I hope --

11          JUDGE GILBERT:  And that's assuming that I  
12          even understood the question.  And we've kind of  
13          done a lot of things here, and I sort of lost the  
14          thread.

15          MR. DONOVAN:  My question is, your Honor,  
16          whether or not under Option 1, assuming Sage does  
17          not utilize TBE, whether or not third-party calls  
18          would be forwarded through -- by SBC to Sage for  
19          billing.

20          THE WITNESS:  It is my understanding under  
21          Option 1 that if Sage elects Option 1, that those  
22          calls will be blocked, if they are forwarded.

1 BY MR. DONOVAN:

2 Q. Okay. Could I move you forward to Section  
3 2.4 of that agreement, Option 3, CLEC of ABC  
4 accounts receivable.

5 Are you at that section, sir?

6 A. Yes, I am.

7 Q. About halfway through that first paragraph  
8 under Section 2.4 there's a sentence that reads,  
9 CLEC shall receive an account receivable  
10 discount, parens, the accounts receivable  
11 discount, end parens, off the total amount of  
12 charges for SBC originated ABS messages and  
13 applicable taxes, which requires that the CLEC  
14 pay 70 percent, paren, 70 percent, of the total  
15 amount of charges for SBC's 13-States originated  
16 rated ABS messages and applicable taxes and any  
17 ABS charges passed through SBC 13-States by  
18 third-party LECs that are included in a DUF  
19 transmission.

20 Do you see that sentence?

21 A. Yes, I do.

22 Q. Under the Option 3 then, would SBC pass

1       through third-party LECs to Sage -- third-party  
2       LEC charges to Sage of ABS traffic?

3           A.   It's my understanding reading that  
4       language that they could.   I guess I did not read  
5       it to mean mandatory that they would but that  
6       they could.

7           Q.   They could pass through those third-party  
8       calls?

9           A.   Correct.

10          Q.   And Sage would be liable for those  
11       third-party calls; correct?

12          A.   My understanding is they'd be liable for  
13       70 percent under Option 3.

14          Q.   Okay.

15          A.   Under the revised appendix.

16                       (Whereupon, a discussion  
17                       was had off the record.)

18       BY MR. DONOVAN:

19          Q.   If you could, please turn -- going back to  
20       the SBC affiliate contract, Mr. Zolnierrek,  
21       Section 5.4.3.

22          MR. ANDERSON:   What's the reference?

1           MR. DONOVAN:  The SBC affiliate contract  
2     Paragraph 5 -- strike that.  I have the wrong  
3     cite here.

4                     5.9.1, your Honor, I'm sorry.  I had the  
5     wrong cite.

6           JUDGE GILBERT:  Before you begin questioning  
7     on that, let me ask you to take what might be  
8     what you refer to as the 5,000-foot view on this.

9                     What I'm assuming you're going to do is  
10    point out some sections of the SBC contract, and  
11    you're going to make comparisons between that and  
12    what is now a revised appendix to Mr. Smith's  
13    testimony.

14          MR. DONOVAN:  Correct.

15          JUDGE GILBERT:  How meaningful is it to have  
16    Dr. Zolniererek's comments with respect to those  
17    differences, which you will certainly emphasize  
18    in your briefing anyway?

19          MR. DONOVAN:  Well, it's important in that  
20    staff has adopted and recommended the adoption of  
21    the 13-State appendix, and the points I'm trying  
22    to drive home are that those terms in 13-State

1       appendix are not even the same terms that SBC  
2       treats its affiliates to.

3               And my ultimate hope is to discuss with  
4       Mr. Zolnierrek how the propriety of the terms of  
5       the 13-State that he's recommending being used in  
6       comparison to the other agreements out there.

7       JUDGE GILBERT: Right, and I understand the  
8       point you're attempting to support. I understand  
9       it will be a point that you will make in your  
10      briefs irrespective of Dr. Zolnierrek's opinions  
11      of the point you're making.

12             I'm thinking in the interest of time, if  
13      we were to ask Dr. Zolnierrek if he accepts that  
14      these two documents are, in fact, different in  
15      the way that you assert that they are different,  
16      would that change his opinion with respect to his  
17      ultimate recommendation?

18             Because that's where you're trying to  
19      get him to go.

20      MR. DONOVAN: Correct.

21      JUDGE GILBERT: Could you, in interest of  
22      time, tell us what your answer would be to that



1 question.

2 THE WITNESS: It would not change my opinion.  
3 I believe that I would have to know more about  
4 the circumstances between the carriers.

5 I think I've already said that I believe  
6 that it's -- there's a possibility that carriers  
7 could provide this service in the arrangement  
8 other than what's been proposed.

9 Neither party proposed this arrangement,  
10 and Sage proposes it's not the same in this  
11 agreement either; and they haven't proposed to  
12 adopt this agreement.

13 My opinion is it would have no impact on  
14 my recommendation, you know, subject to if Sage  
15 proposed to accept this agreement, then staff  
16 would have to consider a brand-new proposal. But  
17 I'm not necessarily prepared to do that today.

18 JUDGE GILBERT: All right. And you say that  
19 understanding that Mr. Donovan's point is that  
20 the two documents have different provisions,  
21 which would among other things allow ABS calls  
22 from parties other than SBC to be sent on to Sage

1       for billing and collection.

2           MR. DONOVAN:  If I could clarify, your Honor,  
3       we would also assert that this document does  
4       allow for exactly what Sage is asking for, in  
5       that it provides full recourse to SBC Telco for  
6       all uncollectible amounts.

7           JUDGE GILBERT:  This document meaning?

8           MR. DONOVAN:  The SBC affiliate contract.  It  
9       asks for full recourse.  It's equivalent to the  
10      Sage proposal for Section 6 where we assert that  
11      ABS -- Sage will not be liable for any ABS  
12      charges.

13          JUDGE GILBERT:  Dr. Zolnierrek, you just heard  
14      what Mr. Donovan said?

15          THE WITNESS:  Yes.

16          JUDGE GILBERT:  What impact did that have on  
17      your conclusion?

18          THE WITNESS:  I guess I'm not -- is Sage  
19      proposing to choose particular options from this  
20      agreement?

21          MR. DONOVAN:  Sage has proposed from the  
22      beginning -- from the petition, we included a

1 language in Section 6, in the Exhibit 2, the  
2 master interconnection agreement that would  
3 preclude Sage from being liable for any ABS  
4 charges and allow for recourse back to SBC.  
5 That's been our constant position.

6 THE WITNESS: And my position remains that SBC  
7 brought specific evidence that there was a  
8 particular problem with respect to these  
9 particular carriers and the arrangements in other  
10 states why such an agreement wouldn't work in  
11 proposed terms that might make this work.

12 Sage proposes alternative terms that my  
13 understanding is not only not full recourse but  
14 you get to keep 50 percent of whatever you  
15 collect, which is different from this agreement I  
16 believe.

17 So, I mean, if you're proposing to adopt  
18 this agreement, it's something brand-new. I  
19 mean, with respect to the one issue possibly,  
20 it's the same but. . .

21 MR. ANDERSON: I would also like to make an  
22 observation; and that is, our basic problem here

1 with this whole line of cross is there's no  
2 foundation laid that this agreement is comparable  
3 or effects a comparable service to the LEC-to-LEC  
4 billing and collection of ABS services that is  
5 proposed or is the subject of this proceeding.

6 This is a contract involving only  
7 Advance Data Service, affiliates of SBC. It  
8 applies to Advance Data Services, not switched --  
9 circuit switch voice grade services. It is  
10 not -- so it is not an arrangement -- a LEC to  
11 LEC where you have two dial tone providers who  
12 are basically in a position where they can  
13 reciprocate with providing ABS calls to each  
14 other.

15 Furthermore, more fundamentally, this is  
16 provided at the last minute. Dr. Zolnierrek has  
17 asked questions. He said he had a brief time to  
18 review it. I don't think there's any foundation  
19 laid that this is relevant in terms of a compare  
20 and contrast to the situation.

21 That's a problem we have with this line  
22 of cross. It's a problem we have with

1 Ms. Timko's testimony on the issue, quite  
2 frankly. I don't want to say any more about it;  
3 but if this goes in the record through Ms. Timko,  
4 if Ms. Timko's testimony goes in, then we're  
5 going to want to have an opportunity to ask  
6 Ms. Burgess some questions to clarify exactly  
7 what this agreement is and what this agreement is  
8 intended to do and why this agreement has no  
9 bearing on the issue in this case.

10 To simply pull a document between SBC  
11 and a group of affiliates providing one type of  
12 service, one type of arrangement and then compare  
13 that to the agreements or the proposals at issue  
14 in this case, I think is not relevant.

15 JUDGE GILBERT: Okay. Well, we've had that  
16 preview of your brief now.

17 Let's go back to Dr. Zolnierrek's  
18 response which I felt was fairly comprehensive in  
19 terms of your line of questioning.

20 JUDGE GILBERT: Correct, your Honor. If we  
21 want to proceed along the route -- there's just  
22 certain points that I want to throw out there for

1     the record where we think there's compare and  
2     contrast. We don't necessarily need to go  
3     through the machinations with Mr. Zolnierrek and  
4     have him do that comparison, but these are the  
5     points that we feel are in a compare and contrast  
6     need to be made.

7             First one being full recourse. The SBC  
8     contract allows for full recourse. The ABS  
9     appendix does not. The next point being that  
10    under the affiliate contract, Section 5.9, allows  
11    SBC to refuse at any time to continue billing ABS  
12    charges. The ABS appendix does not.

13            Section 5.9 allows SBC to terminate  
14    billing and collection at any time and without  
15    liability as a result of end user complaints to  
16    state commissions, FCCs or investigations.

17           MR. LANNON: Your Honor --

18           JUDGE GILBERT: Wait, wait, wait.

19           MR. LANNON: Okay.

20           MR. DONOVAN: That's all I want to point out,  
21    your Honor, if we're going to do a truncated  
22    cross.

1 JUDGE GILBERT: All right. Mr. Lannon.

2 MR. LANNON: I'm not sure, was counsel

3 testifying there?

4 JUDGE GILBERT: No, he --

5 MR. LANNON: Or is he just giving you a

6 preview of where he's going?

7 JUDGE GILBERT: He was proceeding in a manner

8 that was entirely consistent with what I was

9 attempting to do in order to shorten things out.

10 MR. LANNON: Okay.

11 JUDGE GILBERT: And I thought he was doing

12 that in an appropriate spirit rather than

13 persisting with a line of questioning that

14 probably wasn't going to get him what he wanted

15 anyway.

16 MR. LANNON: Okay.

17 JUDGE GILBERT: I wish you wouldn't disparage

18 what he was attempting to do there.

19 Do you want to do anything else?

20 MR. DONOVAN: I'm personally finish with my

21 cross. I don't know about Kelly.

22 JUDGE GILBERT: Okay. Mr. Kelly, you will be

1 speaking with regard to -- or you'll be asking  
2 questions with regard to what had been  
3 Mr. Hoagg's testimony now as adopted by  
4 Dr. Zolnierrek?

5 MR. KELLY: Yes, your Honor.

6 JUDGE GILBERT: Go ahead.

7 We're waiting on the witness. Are you  
8 ready?

9 THE WITNESS: Sure.

10 JUDGE GILBERT: Okay. Good.

11 CROSS-EXAMINATION

12 BY

13 MR. KELLY:

14 Q. Mr. Zolnierrek, is it your understanding  
15 that a UNE-P carrier, carrier providing local  
16 exchange service to customers by purchasing  
17 unbundled network elements through the platform  
18 is considered by the Illinois Commerce Commission  
19 to be a facilities-based carrier?

20 A. I believe certain things that, yes, they  
21 are referred to as a facilities-based carrier,  
22 yes.



1           Q.   Do you know whether the Illinois Commerce  
2           Commission staff has an opinion about whether  
3           credit scoring in marketing to local exchange  
4           customers is an acceptable practice in Illinois?

5           A.   Can I speak generally for staff on that?  
6           I can only give you my personal opinion.  I have  
7           not discussed it with other members of staff.

8           Q.   What's your personal opinion?

9           A.   I would find that if signing up a new  
10          customer, credit scoring is an acceptable  
11          principle practice depending on -- I would say  
12          subject to any rules we have regarding  
13          discrimination and so on, that doing credit  
14          checks and credit scoring is again not -- to the  
15          extent it's not consistent with any of our rules.

16          Q.   But you haven't checked with -- in  
17          developing that opinion, you haven't checked with  
18          the Illinois Commerce Commission, consumer  
19          services division?

20          A.   No, I have not.

21          Q.   And would it be the Illinois Commerce  
22          Commission, consumer services division that would

1 have better knowledge about the Commission  
2 staff's positions with respect to credit scoring?

3 A. With respect to credit scoring, I can't  
4 say whether they would or would not.

5 Q. It's -- adopting policies with respect to  
6 credit scoring is not within the domain of your  
7 authority; would that be fair to say?

8 A. I'm not sure that we're prohibited from  
9 participating in policy discussions on credit  
10 scoring. I just haven't personally been in any.

11 Q. Now, in your testimony at Line 139 --

12 A. Exhibit 2.0?

13 Q. Yes.

14 You talk that -- I'm sorry, you discuss  
15 that SBC's proposal to require Sage to bill and  
16 collect for SBC's or other third-party's ABS  
17 calls is acceptable as a general matter; correct?

18 A. I think in Exhibit 2, staff addressed the  
19 basic -- I think it was pointed out that the  
20 staff addressed the basic issue that -- as we saw  
21 it, and I think it's consistent with what Witness  
22 Timko said was the basic issue on liability for

1 calls.

2 And in addressing that issue, we thought  
3 SBC's proposal was a reasonable proposal to  
4 address --

5 Q. So just I understand, it's your  
6 understanding that SBC should be permitted to  
7 have Sage bill for SBC and other third-party  
8 calls with no recourse for uncollectibles back to  
9 SBC; so in the event that Sage end users doesn't  
10 pay those third-party calls or the SBC charged  
11 calls, Sage cannot recourse that back to SBC?

12 A. I'm not sure that's consistent with SBC's  
13 proposal. My understanding is there's three  
14 options in SBC's proposal, all open to Sage. 1  
15 is you can block, in which case I don't believe  
16 recourse would be even relevant. 2, that you  
17 could recourse portion; and 3 that you could just  
18 buy the accounts and there would be no recourse  
19 but you buy the incollect calls at a discount.

20 Q. And the 35 percent -- I'm sorry, when you  
21 refer to cushion, what exactly are you referring  
22 to? Option 2 under SBC's proposal or Option 3

1 under SBC?

2 A. I think that cushion was referred to with  
3 respect to both 2 and 3; that looking at both the  
4 ability to recourse and to buy the incollect  
5 calls, both would allow Sage to have a certain  
6 level of uncollectibles, and I think the cushion  
7 refers to that level of -- the difference between  
8 the amount either you could recourse or the  
9 discount and what uncollectibles Sage would  
10 actually experience.

11 Q. So the discount option is they would buy a  
12 dollar's worth of ABS calls and pay SBC 65  
13 percent, collect what they can, and their cushion  
14 as you described it is the 35 percent difference  
15 between what they paid SBC for the --

16 A. No. I think the cushion would be between  
17 the actual uncollectibles and the 35 percent. So  
18 if, for example, you were able to collect 100  
19 percent, then the cushion would be 35 percent.  
20 If you were only able to collect 30 percent, the  
21 cushion would be 5 percent.

22 Q. Okay. And evidence is there on Sage's

1 uncollectible factor for third-party calls billed  
2 to Sage by SBC?

3 A. I don't believe there is any evidence  
4 other than evidence on what Sage provides to SBC.  
5 There was some evidence that Sage provided from  
6 zero to 50 percent. And I don't believe that was  
7 specific to third-party calls. I think it was  
8 just collectible to ABS calls.

9 But to my knowledge, Sage has provided  
10 no evidence as to their own actual uncollectible  
11 experience in other states.

12 Q. Well, it's your understanding also that  
13 Sage does not put third-party calls or SBC  
14 calls -- SBC, ABS calls on their local exchange  
15 carrier bill that they bill to their end users;  
16 isn't that correct?

17 A. I'm not sure if that's the practice in all  
18 states. I know that was referred to; but,  
19 frankly, I'm a little unclear as to the business  
20 practices in other states.

21 I think there's a general reference to  
22 those, but I don't think it was clearly specified

1       in each of the states that Sage and SBC have an  
2       agreement on what exactly was done. And that's  
3       something staff is trying to clarify and has  
4       tried to clear through DRs. But we have yet to  
5       obtain that evidence that would help us, you  
6       know, if we were to obtain that evidence, make a  
7       decision with that evidence.

8       Q. Okay. Do you have any evidence as to what  
9       Sage's uncollectible factor is when they attempt  
10      to bill on their local exchange carrier bill an  
11      ABS call charge by SBC to one of SBC's customers?

12      A. It's my understanding -- maybe I'm --

13      Q. Same answer?

14      A. No. It's my understanding that Sage  
15      doesn't do that. But that's --

16      Q. So Sage does not put SBC charges on a Sage  
17      local exchange carrier bill to the best of your  
18      understanding?

19      A. To the best of my understanding, but I'm  
20      not -- I don't think it's in the record clearly.

21      Q. So we don't know yet what the  
22      uncollectible factor is under that circumstance?

1           A.   No.

2           Q.   Now, is it staff's proposal that Sage  
3           should be required to put those ABS charges on a  
4           Sage local exchange carrier bill?

5           A.   No, I don't believe that was staff's  
6           recommendation, no.

7           Q.   You've taken no position on whether the  
8           ABS charges should be put on a local exchange  
9           carrier bill or whether Sage should be required  
10          to bill those charges separately?

11          A.   No, I don't think -- staff did not find it  
12          necessary to take position on it.

13          Q.   Okay.  So going back to the cushion, do  
14          you have any knowledge of what the average rate  
15          is for an ABS charged billed by Sage that's, you  
16          know, received from SBC either in Illinois or any  
17          other states?

18                Obviously, not Illinois because they  
19          don't do business yet.

20          A.   No, I do not.

21          Q.   So you don't know what the uncollectible  
22          dollar value is for ABS charges in other -- that

1 Sage realizes on those ABS charges; isn't that  
2 correct?

3 A. No. Like I said, the only evidence --

4 Q. Isn't that correct, Mr. Zolnierrek?

5 A. That's correct.

6 Q. So you personally don't have any personal  
7 knowledge whether Sage -- the realized value by  
8 Sage of whatever collections it receives on these  
9 third-party and SBC third-party ABS calls, you  
10 don't have any knowledge of what the realized  
11 dollar value is of those third-party calls; do  
12 you?

13 MR. LANNON: Objection.

14 I'll withdraw my objection.

15 THE WITNESS: No.

16 BY MR. KELLY:

17 Q. So if I were to tell you -- if I were to  
18 have you assume that there is a \$4 average ABS  
19 charge on this traffic that might occur in  
20 Illinois that SBC would bill through Sage to the  
21 SBC customers that have authorized those calls --

22 JUDGE GILBERT: Do you mean the SBC customers



1 or the Sage customers?

2 MR. KELLY: The Sage local exchange carrier  
3 customer. The SBC customer. It's the same  
4 customer, but it was actually the SBC customer  
5 that authorized the charge. It's the same  
6 person.

7 JUDGE GILBERT: Okay.

8 MR. ANDERSON: I'm a little confused.

9 JUDGE GILBERT: Why don't you start the  
10 question over.

11 BY MR. KELLY:

12 Q. Putting aside whose customer it is for  
13 this point, if I were to have you assume that the  
14 average ABS charge for the charges that get  
15 passed through by -- to Sage, to the local  
16 exchange customer, and assuming your cushion of  
17 35 percent, you have no knowledge of what the  
18 resulting realization value is to Sage on that  
19 call?

20 A. Only to the extent that SBC has indicated  
21 that Sage in other states, not Illinois, has only  
22 returned to them 5 to 50 percent of the face

1 value of what SBC has billed to them.

2 But to the extent of Sage has collected  
3 itself, I have no knowledge. And I believe staff  
4 asked that question of Sage, and Sage refused to  
5 answer in the data requests.

6 Q. If a prison inmate in Cook County makes a  
7 1-800 collect call to a Sage local exchange  
8 carrier bill and MCI -- knowledge for the record  
9 that that's an MCI carrier call -- and MCI passed  
10 that call on to SBC and SBC then passed that call  
11 on for collection to Sage, should Sage be  
12 responsible for having to bill that call, in your  
13 opinion, to its local exchange carrier customer?

14 A. Just to be clear, we're going outside  
15 particular recommendations of -- or the  
16 particular proposals of each party in this case?

17 Q. Well, I'm trying to direct your attention  
18 to the third -- put some meat to the bone on the  
19 third-party calls.

20 It's a 1-800 MCI -- 1-800-COLLECT  
21 carried call originated by a prison inmate  
22 terminated to a Sage local exchange carrier bill.

1           A.   It's my understanding I believe Witness  
2   Timko indicated that Sage already contracts on  
3   its own with those carriers.  Is that not  
4   correct?  So that they do have an agreement that  
5   Sage contracts --

6           Q.   Well, if MC- -- doesn't MCI and SBC have  
7   an agreement also to bill traffic, to the best of  
8   your knowledge?

9           MR. LANNON:  I'm going --

10          THE WITNESS:  I think that's the dispute.  No,  
11   I don't think they have any agreement.

12          BY MR. KELLY:

13          Q.   Okay.  Strike that then.  Let me strike  
14   the example.

15                 Assume that there's a long-distance  
16   carrier that originates -- a long-distance  
17   carrier that carries an intraLATA toll call in  
18   Cook County long-distance and the carrier -- does  
19   that long-distance carrier who completes the  
20   incollect call to a Sage customer, assume that  
21   that carrier does not have a BNC agreement with  
22   Sage, should that long-distance carrier be

1       required -- I'm sorry, should Sage be required to  
2       bill that long-distance carrier's call if given  
3       to it by SBC?

4           MR. LANNON: Your Honor, just for the record,  
5       I'm going to object. That's beyond the scope of  
6       this witness' testimony.

7           JUDGE GILBERT: Well, I'll overrule it based  
8       on that objection.

9           THE WITNESS: Based on my policy  
10       recommendation, I believe that this service in  
11       the particulars -- under the particular  
12       circumstances here could best be provided to the  
13       Illinois public by both parties under --  
14       between -- of the two options given by SBC and  
15       Sage under the options provided by SBC.

16                 With respect to third-party calls in  
17       particular, I don't know the circumstances of how  
18       feasible it would be to make those arrangements  
19       directly between carriers, whether that would be  
20       a problem, whether it could be done business to  
21       business.

22                 My belief is if it -- the policy problem

1 I was addressing specifically had more to deal  
2 with collect calls between SBC and Sage.  
3 Third-party calls, I would say it would be  
4 reasonable to, unless I learned something else,  
5 for Sage to deal directly with, for example, Bell  
6 South or a long-distance carrier.

7 Q. You're aware that the FCC just authorized  
8 SBC to engage in long-distance traffic --

9 A. Yes.

10 Q. -- interLATA?

11 If an SBC inmate has a phone in the  
12 prison in Rockford or Marion and completes an  
13 interLATA call to a Sage customer in Cook County,  
14 should SBC long-distance in that circumstance be  
15 able or be required to -- I'm sorry, should Sage  
16 be required to bill that call that incollect call  
17 through the SBC interconnection agreement that's  
18 being discussed here?

19 A. Let me be clear. So you're trying to get  
20 at the affiliate relationship as differentiating  
21 SBC's affiliate from another long-distance  
22 carrier? Is that --

1           Q.   SBC long-distance.  I don't know whether  
2           it's through an affiliate or whether it's through  
3           SBC.

4           A.   I'm trying to understand the question.

5           Q.   Okay.  I'm sorry if you don't understand  
6           it.

7                       Should Sage be required to bill and  
8           collect an SBC long-distance call through the  
9           terms and conditions of this interconnection  
10          agreement?

11          MR. LANNON:  Your Honor, I'll object to the  
12          question on that it calls for speculation about  
13          facts that aren't in the record at all.

14                       I'll withdraw my objection.

15          THE WITNESS:  It's my understanding that both  
16          parties have agreed to exactly that scenario,  
17          interLATA calls that SBC -- if they deliver an  
18          interLATA call -- interLATA cold call to Sage  
19          that both parties agree that Sage will pay the  
20          bill.

21          Q.   How about an interLATA call?

22          A.   That's --

1           Q.    An SBC interLATA call.

2           A.    I believe neither party has -- my

3           understanding is that neither party has proposed

4           that in this particular agreement, but you could

5           clarify that.

6           Q.    So it's your understanding -- when you

7           developed your opinions, it was your

8           understanding that, quote/unquote, third-party

9           passed through calls did not include SBC

10          affiliates on interLATA calls; was that your

11          assumption?

12          A.    On interLATA calls?

13          Q.    InterLATA calls.

14          A.    Frankly, I don't know. I don't know

15          whether they are or not included.

16          Q.    In your opinions?

17          A.    I simply don't know.

18          MR. ANDERSON: Can I just interject?

19          JUDGE GILBERT: No.

20          MR. ANDERSON: I'm sorry?

21          JUDGE GILBERT: No.

22          MR. ANDERSON: Okay. Thank you.

1 BY MR. KELLY:

2 Q. Is it your understanding -- we asked some  
3 discovery requests and I just want to -- I can go  
4 through this cross exhibit or I can just ask you  
5 the questions. It's easier if I just quickly go  
6 through the questions.

7 In all with ones that I've asked you in  
8 this discovery request, you had indicated that  
9 you don't have an opinion yet but you might  
10 develop one as time evolves.

11 Or let me be more specific.

12 You say staff -- if staff does not take  
13 the position on this issue, is it -- staff does  
14 take a position on this issue that will be  
15 contained in staff's direct testimony schedule to  
16 be filed on October 15th, 2003.

17 Now, some of the questions we had asked  
18 you some were addressed in your opinion -- I'm  
19 sorry, in your direct testimony. So let me just  
20 ask you if you -- if staff currently has position  
21 on these points.

22 A. Let me clarify. I think perhaps in 95



1       percent of the questions you've asked me are, to  
2       my knowledge, hypothetical.

3               That Sage has agreed to do -- my  
4       understanding is Sage has agreed to do the  
5       billing and collection for SBC.

6               If that changes, then staff would have  
7       to perform opinions on certain things and you've  
8       asked me to express my opinions based on those as  
9       of today, that if Sage were to change its  
10      position, what would I say.

11              And I gave you, to the best of my  
12      ability, what I would say. But my understanding  
13      is 95 percent of this is hypothetical that Sage  
14      is actually agreed to do the billing and  
15      collection.

16       Q. Hold on. Let me just ask the questions  
17      because that's not -- if that's your opinion when  
18      I ask you the questions, then that's fair.

19       A. Okay.

20       Q. Please explain whether staff believes that  
21      failure of an end user to pay an ABS charge is  
22      grounds for disconnection of that end users local

1 exchange service? Do you have an opinion on  
2 whether that is the case?

3 A. See, in that circumstance, it's my  
4 understanding that both parties have agreed that  
5 that would be the case, that there would be toll  
6 blocking.

7 Q. No, discontinuing -- disconnection on end  
8 users local service for failure to pay an ABS  
9 charge. Should that be permissible?

10 A. You would have to look at the rules, the  
11 Commission rules. My interpretation of those  
12 rules is that it would not be permissible. But  
13 that's my own interpretation not discussed with  
14 other staff.

15 Q. Okay.

16 A. Again, to point out, I don't know that  
17 that is relevant to any of the recommendations.

18 Q. Okay.

19 A. So it's just hypothetical.

20 Q. Well -- okay. In staff's opinion, is  
21 there a policy reason or rationale why a  
22 competitive local exchange carrier like Sage

1       should be required to subsidize incollect charges  
2       by guaranteeing a percentage of SBC's incollect  
3       calls?

4           A.   That, you'd have to clarify for me what  
5       subsidize means.   I guess I don't understand.

6           Q.   Okay.   If the 35 percent cushion didn't  
7       fully recover Sage's cost, should that be a  
8       required percentage?

9           A.   Ever, over time, consistently?

10          Q.   On average.

11          A.   It was our understanding from the  
12       testimony that it would not be the circumstance.  
13       If we found evidence that if Sage was doing  
14       everything it could to bill and collect in a  
15       reasonable manner and couldn't recover 35 percent  
16       of its costs, we've had evidence to that effect,  
17       then we would probably alter our recommendation.

18          Q.   And one of the things that would not be  
19       reasonable in your opinion to try and collect  
20       that would be threatening to disconnect local  
21       service?

22          A.   It's my understanding that that would not

1 be allowed by the Commission rules. But, again,  
2 that's only my interpretation of the rules.

3 MR. LANNON: Your Honor, once again, I'd like  
4 to object that this line of questioning based on  
5 these data requests is beyond the scope of this  
6 witness' testimony.

7 JUDGE GILBERT: Are you asking to strike  
8 what's already been done?

9 MR. LANNON: No, going forward I'm objecting.

10 MR. KELLY: I've got one, maybe, more  
11 question. Let me read it real quick.

12 JUDGE GILBERT: Well, ask the question and  
13 we'll see if he objects.

14 BY MR. KELLY:

15 Q. Is there a public policy justification for  
16 the Illinois Commerce Commission to require a  
17 local exchange carrier to provide billing and  
18 collection services to other carriers carried by  
19 a LEC -- a carrier that's not affiliated with a  
20 local exchange carrier for operator service  
21 provider calls?

22 MR. LANNON: Same objection, your Honor.

1 JUDGE GILBERT: I'm going to sustain that.

2 MR. KELLY: Okay.

3 JUDGE GILBERT: We're really drifting now.

4 BY MR. KELLY:

5 Q. Well, these are operator service -- the

6 ABS charges are simply operator service calls;

7 aren't they?

8 MR. LANNON: Same objection, your Honor.

9 JUDGE GILBERT: Yeah.

10 MR. KELLY: Okay. I'll withdraw it.

11 JUDGE GILBERT: Okay. Good. Thank you.

12 MR. KELLY: No further questions, your Honor.

13 Thank you.

14 JUDGE GILBERT: Mr. Lannon, consider whether

15 you want to direct; and while you're thinking

16 about that, understand that that would open as to

17 recross as well.

18 MR. LANNON: Yes. Can I have just one second.

19 (Whereupon, a brief

20 recess was taken.)

21 JUDGE GILBERT: We're back on the record.

22 Mr. Lannon, what's your decision with

1       respect to redirect?

2           MR. LANNON:   Staff has no redirect, your

3       Honor.

4           JUDGE GILBERT:   Okay.   That's it for

5       Dr. Zolnierrek then.   Thanks very much.

6           THE WITNESS:   Thank you.

7           JUDGE GILBERT:   We'll turn to I guess the

8       motion and then to Mr. Smith.   Let's take a brief

9       break then.

10                               (Whereupon, a brief

11                               recess was taken.)

12           JUDGE GILBERT:   We're back on the record.

13                       The next order of business would be to

14       take a look at motion to strike filed by Sage

15       Telecom, which pertains to both of the SBC

16       witnesses, both Burgess and Smith.

17                       If those arguments are at all severable,

18       and we'll see as we go along, I'll need to make a

19       call most immediately with respect to Mr. Smith,

20       and regarding Ms. Burgess that can be addressed

21       later, then that's what we'll do.

22                       All right.   I've read the motion.

1 Anything else you want to say in support of?

2 MR. DONOVAN: Your Honor, in order to truncate  
3 and save time we'll stand by the terms of the  
4 motion as filed and simply point out in oral  
5 arguments that the information that we sought  
6 through our discovery is directly applicable to  
7 basic foundations and opinions made by both  
8 witnesses as to what the, quote, industry  
9 standard or industry norm is, as to what the  
10 average industry uncollectible rate, as to what  
11 Sage's uncollectible rate is.

12 All this basic opinions are exactly the  
13 type of information we sought in discovery,  
14 exactly the type of information SBC has refused  
15 to provide. We'll stand by the terms of the  
16 pleading itself in terms of framing our argument.

17 But discovery is very important on these  
18 issues and right now getting to the foundation  
19 argument, the second argument we make in our  
20 brief, there's absolutely nothing to support the  
21 opinions in the record, nor attached to the  
22 testimony that would support the allegation or

1       the opinions made. And it's fundamentally  
2       improper, and under Illinois case law is without  
3       foundation it should be stricken. So we'll stand  
4       by the pleading.

5           JUDGE GILBERT: Okay. Mr. Anderson, response?

6           MR. ANDERSON: Yes. Sage filed its  
7       arbitration petition on September 17th. As you  
8       know, arbitration proceedings are highly  
9       expedited under the Commission rules and this one  
10      in particular.

11                 Section 761.110 of the Commission's  
12      arbitration rules has a schedule for discovery  
13      and requires that discovery requested by the  
14      petitioner be filed with the arbitration  
15      petition.

16                 We did receive brief discovery with the  
17      arbitration petition and in accordance with the  
18      rules and the discussion at the status hearing,  
19      we responded to that discovery in a timely  
20      manner.

21                 Under the schedule established in this  
22      case, Sage's testimony in support of its petition



1       was filed on October 1st, 2003. And SBC's  
2       testimony was due seven business days later on  
3       October 10th, 2003.

4               Despite the rules, despite the schedule,  
5       despite the fact that Sage now indicates that the  
6       information it was seeking was absolutely vital  
7       to its case, Sage waited until approximately  
8       three weeks after it filed its petition till  
9       October 6, 2003 and -- which was right in the  
10      middle of the period when SBC was preparing its  
11      testimony in response to the October 1st filing  
12      of Sage as well as responding to a very detailed  
13      data request of staff.

14             The data requests were not limited to  
15      requests of the nature described by Mr. Donovan.  
16      They have provided certain examples, I believe  
17      nine data requests as examples of the kind of  
18      data that they feel now is crucial to their case.

19             Rather, they submitted a -- what I would  
20      say was a blunderbuss attempt to basically put us  
21      in a bind by submitting 45 data requests and  
22      requests for discovery on October 6 asking us to

1 provide it by Monday, October 13th.

2 Now, we did -- on October 8th, we filed  
3 or sent an objection -- a letter objecting to the  
4 data request. Without getting into the merits of  
5 our objection, at this point, I'm not even sure  
6 that is necessary or appropriate for your Honor  
7 to consider because what they have now done is  
8 waited two weeks after we sent this letter. They  
9 knew what our objection was.

10 We had not one communication, not one  
11 communication by writing, by phone, anything, any  
12 communication from Sage or their counsel to  
13 indicate that, number one, they had a problem  
14 with our objection or that they thought our  
15 objection was ill-founded or that there was  
16 particular information that they felt was  
17 absolutely critical and that they needed. There  
18 was no conversation.

19 I would also add that at the time -- and  
20 it's indicated in the letter of October 6, which  
21 is -- October 8th, which is attached to their  
22 motion, we offered notwithstanding our objection

1       to provide the responses to staff data requests.  
2       Now much of those data requests contain  
3       confidential information and we submitted with  
4       our objection a proprietary agreement.

5               On Tuesday of October 14th, I followed  
6       up with an e-mail indicating, Well, we haven't  
7       received your signed proprietary agreement, are  
8       you interested in the data that we provided  
9       staff?

10              I got no response to that until Monday,  
11       Monday afternoon, three days ago, I got a request  
12       from counsel for Sage asking -- or telling me  
13       that they were faxing us the signed proprietary  
14       agreement, which he did, and asking if I would  
15       forward the confidential information we had  
16       provided to staff, which I did.

17              Not even in that conversation did Sage  
18       bring up our objections or indicate that there  
19       was some information beyond that that we had  
20       provided to staff that they thought was necessary  
21       for our case.

22              Now, it's fundamental under Illinois

1 practice, and the rules bear this out, that if  
2 parties have a problem with discovery that  
3 they're required to attempt to work those  
4 problems out before bringing the attention to the  
5 Commission for formal action.

6 In fact, the rule that Sage invokes,  
7 which is in the petition or motion strike, which  
8 is 761.220, provides the examiner or the ALJ with  
9 discretion in appropriate circumstances to impose  
10 sanctions such as motions to strike where there's  
11 a violation of a discovery order.

12 There's no discovery order in this case  
13 compelling us to provide those responses. They  
14 didn't even file -- first, to take a step to file  
15 a motion to compel.

16 Furthermore, the Commission's rules  
17 require that in a motion a compel discovery that  
18 much such motions, quote, incorporate a statement  
19 showing that after consultation and reasonable  
20 attempts to resolve differences, that those  
21 attempts have failed.

22 And I would cite you to 83 Ill. Admin.

1 Code Section 200.350. That statement, you'll  
2 note, does not appear in the motion. They can't  
3 make that statement because they made no attempt  
4 whatsoever to consult with us or to attempt to  
5 resolve our disputes over discovery.

6 Not having even received a response to  
7 our letter until we saw the motion, I was not  
8 aware that there was a dispute. We made our  
9 objection. They did not dispute our objection.  
10 They did not call me up.

11 Basically what they did was they took  
12 our objection, sat on their hands, waited till  
13 the afternoon before the hearing when we were  
14 preparing for hearing and filed this motion to  
15 strike, bypassing the procedures that they are  
16 required to do, which is the first, consult,  
17 negotiate; second move to compel; three, if all  
18 else fails, move to strike. They didn't take any  
19 of those steps.

20 JUDGE GILBERT: Well, they did take the third  
21 step, move to strike.

22 MR. ANDERSON: Yes. That's true.

1                   Section 200.25b of the rules provides  
2           that one of the standards for discretion that  
3           should be -- govern the Commission, is that  
4           persons appearing in and affected -- appearing  
5           and affected by Commission's proceeding be  
6           treated fairly and that, quote, to dissent  
7           parties which do not diligently and in good faith  
8           act diligently in good faith shall be treated  
9           as -- in such a manner as to negate any  
10          disadvantage or prejudice experienced by other  
11          parties.

12                   I would submit that Sage did not act  
13          diligently, number one, in waiting till the 11th  
14          hour to submit the data requests that they feel  
15          are crucial, but most importantly waiting two  
16          weeks to even bring the issue to our attention,  
17          much less the examiner's attention.

18                   And now they put us at an disadvantage  
19          by moving to strike testimony, which they claim  
20          they needed the discovery to fully evaluate.

21                   Even after we filed the testimony, they  
22          didn't call us to say, Oh, by the way, we looked

1 at your testimony. We understand you have an  
2 objection to this broad discovery request, but  
3 here's the ten things we really need to evaluate  
4 testimony. I didn't even get that call.

5 So I think this is gamesmanship right  
6 off the bat. I mean, this is not an unusual  
7 situation for parties to object. We had  
8 objections to every single one of our data  
9 requests that we submitted to Sage. They  
10 submitted some information in response to some of  
11 those. I noticed they objected to stuff. We've  
12 objected to data requests in other cases.

13 The typical practice is if a party has a  
14 problem with the objection, they bring that  
15 problem to the attention of the objecting party  
16 and attempt to resolve the differences. Here,  
17 that attempt was simply not made.

18 At Paragraph four of the petition -- or  
19 the motion -- and this is a little bit -- I'm a  
20 little bit confused here because Sage says that  
21 the portions of the testimony they moved to  
22 strike -- or if I understand their position --

1       should be stricken because they needed the  
2       information that we didn't provide in discovery  
3       to evaluate that testimony.

4               Interestingly enough, Sage, although  
5       they submitted that discovery very late in the  
6       process, they submitted it before they saw our  
7       testimony. So obviously they understood. If  
8       they're now claiming the testimony was relevant,  
9       they understood it to be relevant before they  
10      received our testimony.

11             And the reason they understood it to be  
12      relevant, if they're claiming it's relevant, is  
13      because they've understood our basic position on  
14      this issue all along. They didn't have to wait  
15      and see our testimony to understand that.

16             This issue has been litigated in  
17      Michigan. This issue had been litigated in  
18      Texas, and the mere fact that they submitted the  
19      discovery prior to receiving our testimony  
20      indicates that they had ample opportunity to  
21      submit the discovery earlier in the process.

22             Having said that, when we filed our



1 testimony, if Sage having reviewed our testimony  
2 had called us up and said, Look, we've now  
3 reviewed your testimony; and of the 45, you know,  
4 extensive data requests, we need this  
5 information.

6 We would certainly have talked to Sage  
7 about it. But, again, we did not receive a call.

8 At Paragraph 4 of its motion, Sage  
9 suggests that the section of the testimony that  
10 it seeks to strike provide testimony on, quote,  
11 new issues that were not addressed in Sage's  
12 direct testimony.

13 All I can say in response to that is  
14 that the testimony is directly -- all of the  
15 testimony that we submitted on October 10th,  
16 including the portions that are subject of the  
17 motion, are all directly responsive to the issue  
18 raised in Sage's arbitration petition and  
19 addressed in Sage's testimony, which is whether  
20 SBC can -- and this is in Sage's words, not  
21 ours -- quote, impose on Sage an obligation to  
22 act as guarantor to ensure payment to SBC for

1       incollect calls which are associated with certain  
2       SBC third-party provided calls, such as collect  
3       calls, calling card calls and third-party calls  
4       that are originated by a Sage customer.

5           JUDGE GILBERT: I'm sorry, where did you just  
6       read from?

7           MR. KELLY: From the petition.

8           JUDGE GILBERT: Oh. Because I thought we were  
9       on Paragraph 4 of the motion. All right.

10                  I'm sorry. Go ahead.

11           MR. ANDERSON: That's okay.

12           JUDGE GILBERT: I'm sure it's there.

13           MR. ANDERSON: No, I'm looking for something  
14       else.

15                  I don't have it in front of me, but if  
16       you look at our response to the petition -- well,  
17       yes, in our response to the petition, which is  
18       paragraph -- in Paragraph 5 of our response, we,  
19       you know, address Sage's issue. We stated our  
20       position.

21                  With respect to that issue, it is our  
22       position that as the carrier which has the

1 business relationship with its own customers and  
2 which provides the service which allows its  
3 customers to collect ABS calls, Sage should have  
4 the responsibility to bill and collect charges  
5 authorized and approved by its customers. And we  
6 added some additional information or assertions  
7 supporting our position.

8 In Paragraph 6, we said our position is  
9 consistent with the normal and standard industry  
10 practices that apply to settlement of ABS charges  
11 between ILECs and between ILECs and  
12 facility-based CLECs.

13 So under the rules, we had a right to  
14 submit a response to the petition, to set forth  
15 our position on that issue. These were not new  
16 issues, and we were permitted -- in fact,  
17 required to submit testimony with that response  
18 supporting our position. That's exactly what we  
19 did. All of the testimony that they moved to  
20 strike is directly relevant to supporting our  
21 position on the issue raised by Sage in its  
22 arbitration. And, therefore, it is not a new

1       issue.

2                   And, again, I come back to the point  
3       that there's a disconnect here because while on  
4       the one hand they said this raises new issues  
5       that they needed discovery for, the discovery  
6       came in before our testimony was filed indicating  
7       that they obviously understood what the issue was  
8       and they could have submitted the discovery in a  
9       more timely manner.

10                  Having said that, though, the real issue  
11       is not whether our objection at that time was  
12       valid, but whether it's valid to come in two  
13       weeks later with a motion to strike, not having  
14       made any attempts to resolve differences under a  
15       highly expedited schedule.  Again, Sage argues  
16       that, quote, the Commission cannot deny Sage  
17       access to discover information relied on by SBC.

18                  The Commission has not denied Sage that  
19       opportunity.  We objected to a data request.  If  
20       they had had a problem with our objection, they  
21       could have brought it to your attention -- our  
22       attention first because under the rules they have

1 to contact us to resolve the difference and then  
2 your attention. They didn't do that. They  
3 haven't been denied anything by the Commission.

4 I would note that Paragraphs 9 and 11 of  
5 the motion there is a discussion of Mr. Smith's  
6 testimony in which he identifies by name of CLEC  
7 and Illinois Commerce Commission docket number, a  
8 number of dockets in which interconnection  
9 agreements with the ABS appendix have been  
10 approved by the Commission.

11 In addition for all the other reasons  
12 that we've discussed, Sage's arguments with  
13 respect to those documents are without merit  
14 because they were publicly available on the  
15 Commission's e-docket Web site. Those agreements  
16 are a part of the record in those cases. We  
17 haven't done anything to prevent Sage from having  
18 access to those agreements.

19 I really think that the argument about  
20 the best evidence rule is frivolous. I'm not  
21 even sure I understand why it's being made here.  
22 That is a highly technical rule of evidence that

1 applies in certain situations where there is a  
2 dispute over the specific terms of an agreement,  
3 such as a contract, when there is some question  
4 about the accuracy of the documents and the  
5 original rather than the -- a copy as to be  
6 required, to my knowledge. But this rule doesn't  
7 have anything to do with the issue and in any  
8 event. It's not generally applied to Commission  
9 proceedings; otherwise, all the documents that  
10 have been submitted today by Sage should be  
11 stricken because they're not original documents.

12 I don't think the best evidence rule has  
13 anything do with this. I think Sage suggested  
14 that the best evidence rule and also the cases  
15 that they cite on Page 7 somehow support the view  
16 that when an expert provides an opinion in a case  
17 such as this, the expert has an obligation to  
18 attach to the testimony every document, every  
19 single piece of information relied upon by the  
20 witness.

21 That is clearly not the case. The  
22 testimony that has been submitted on the issues

1       that go to the motion to strike are supported by  
2       the witnesses. The witnesses have laid a  
3       foundation for their ability, their expertise,  
4       their experience, their knowledge, their  
5       understanding of the issues. That is in the  
6       testimony. There is testimony regarding the  
7       basis for their positions.

8               If Sage through cross-examination wants  
9       to challenge those opinions, they are perfectly  
10      free to do so, but it doesn't go to admissibility  
11      of the evidence.

12             All these cases involve situations in  
13      where the witness testified, and through  
14      cross-examination, the Court determined that the  
15      witnesses were not qualified as experts to  
16      present testimony on the issues that they were  
17      purporting to testify about.

18             That's certainly not the case here; and,  
19      again, this is simply not well-founded,  
20      particularly before there's been any  
21      cross-examination of the witnesses.

22             So I have nothing further.

1           JUDGE GILBERT: For the Sage attorneys, what  
2           is -- what supporting authority is there for  
3           additional data requests by a petitioner after  
4           you have filed your petition?

5           MR. DONOVAN: Well, I think -- my first  
6           assertion would be that the relevant sections  
7           that have been cited by opposing counsels, Part  
8           761, doesn't really address subsequent discovery  
9           being issued.

10                   It says that Sage shall file discovery  
11           with its petition, but doesn't preclude Sage from  
12           filing first and second -- or subsequent rounds  
13           of discovery.

14                   I also note for the record that SBC has,  
15           in fact, produced to Sage two different separate  
16           grounds of discovery in this proceeding.

17                   I think the interpretation that Part 761  
18           pursuant to subsequent discovery would put the  
19           petitioner in a precarious and prejudicial  
20           position that would seriously limit their  
21           abilities to produce an adequate -- to adequately  
22           litigate their positions.



1           JUDGE GILBERT: Well, I would tend to agree  
2       with that point with respect to any additional  
3       issue identified by the respondent, even though  
4       additional discovery is not explicitly  
5       contemplated as far as I can see anywhere in the  
6       rules.

7                   But with respect to the issues contained  
8       in the petitioner -- or identified in the  
9       petition, I'm not seeing any explicit authority  
10      for additional discovery, and I'm not seeing an  
11      implicit authority for it either. Because in  
12      addition 761.110, I'm looking at also at 761.210,  
13      which deals with schedule, pre-arbitration  
14      procedure and discovery, and it's very detailed.  
15      And in that detail, nowhere is there even an  
16      implicit provision for further discovery by the  
17      petitioner. And while I say I might tend to  
18      agree with you. . .

19           MR. DONOVAN: If I may?

20           JUDGE GILBERT: Well, let me finish this  
21      thought. As a matter of personal opinion, the  
22      discovery ought to continue throughout as long as

1 parties aren't prejudiced by it.

2 My opinion doesn't matter here. I don't  
3 see it here in these rules either explicitly or  
4 implicitly.

5 MR. DONOVAN: Well, I would assert, your  
6 Honor, that there's nothing in the rules to  
7 preclude it and the Commission certainly could  
8 have thrown in language in there had it so deemed  
9 necessary.

10 JUDGE GILBERT: Well, if --

11 MR. DONOVAN: But they didn't do that when  
12 they adopted the rule.

13 JUDGE GILBERT: When you have a rule with this  
14 kind of specificity, 761.210, the absence of any  
15 specific provision for further discovery by the  
16 petitioner suggests that its absence is  
17 intentional, that no such discovery is  
18 contemplated under the rule.

19 MR. DONOVAN: Well, I won't belabor the issue,  
20 your Honor. I fail to see how it's appropriate  
21 for the respondent to have additional discovery  
22 beyond what the petitioner is allowed to have.

1           I'd also like to point out that Part 761  
2       certainly does not preclude the application of  
3       rules of evidence including the requirement to  
4       strike testimony that -- for opinion testimony  
5       irrespective of whether it's an expert or not.  
6       Opinion testimony that is entirely without  
7       foundation, the discovery we requested I believe  
8       probably would have presented the evidence and  
9       the foundation upon which the witnesses have made  
10      these unfounded currently allegations.

11       JUDGE GILBERT: Right. Well, I think I would  
12      agree that 761 doesn't address questions with  
13      respect to appropriate foundation for expert  
14      witness.

15           But that's a separate matter than what  
16      I'm talking about right now, because I'm just  
17      looking at one of the bases for your motion,  
18      which is their purported failure to respond to  
19      your discovery questions, and I'll treat the  
20      other issue in a moment.

21       MR. DONOVAN: Sure. No problem.

22       JUDGE GILBERT: I notice in my own reading of

1       the motion one point that Mr. Anderson has  
2       emphasized, which is that you served these data  
3       requests prior to seeing their testimony, to  
4       respond to the testimony.

5               And so I think that really undercuts  
6       your argument that you needed information in  
7       order to respond because you, in fact, had  
8       already sent the data request before you even saw  
9       the testimony.

10       MR. KELLY: Your Honor, if I might just  
11       clarify that point because I don't want to leave  
12       the impression that we did something untoward or  
13       something.

14               There was -- the industry standard point  
15       by SBC was raised for the first time to us at a  
16       workshop up in Wisconsin. You know, it has  
17       something to do with this case but I don't want  
18       to interject those issues with this case. But it  
19       was after that workshop that we became aware --  
20       that we became aware -- that that was a point  
21       that was going to be addressed.

22               So I just want to leave that out there

1       so, you know, how that got developed and how the  
2       timing got developed but I'm not expecting  
3       anybody to respond or suggest that it's relevant  
4       to your analysis. I just want to explain how  
5       that happened.

6           JUDGE GILBERT: Okay. Well, that's fair. But  
7       I will say, I think that I also agree with  
8       Mr. Anderson and had thought this prior to his  
9       presentation that, one, these are not issues that  
10      SBC is raising but rather responses to existing  
11      issues.

12           And while this may have been new  
13      wrinkles on already established positions,  
14      nevertheless the positions, I think, were known  
15      to you at that time. And I think the reference  
16      to the SBC response is well-taken in that regard.

17           With respect to good faith, I don't know  
18      what to say about that. Can you perhaps  
19      enlighten me with respect to some of the timing  
20      of your filing?

21           That was not a very good question, was  
22      it? Let me try to be more specific.

1           Mr. Anderson essentially said, you guys  
2    had lots of opportunities to let them know that  
3    you weren't satisfied with what they were doing  
4    and that you didn't avail yourself to any of  
5    those opportunities. Is he correct in that  
6    regard?

7           MR. DONOVAN: I don't believe that -- for him  
8    to infer that there's lack of good faith I think  
9    incorrect. I don't agree that at all, and I'll  
10   just make that clear for the record.

11           It takes a while to develop positions.  
12   It takes a while to review what you have and to  
13   come to a conclusion as to what you're lacking or  
14   what -- it just takes time. And the fact that,  
15   you know, we didn't get back to him on the 9th, I  
16   don't think is at all appropriate.

17           We also had to review their testimony  
18   and understand their testimony. We reviewed  
19   responses to -- or the positions raised by staff  
20   in their discovery requests to both parties. It  
21   just takes time. And to infer ill faith in that,  
22   I think is entirely inappropriate. We also have

1       other clients and other matters that we're  
2       working on, you know.  There's no ill faith in  
3       what we did, I believe.

4           JUDGE GILBERT:  Well, with regard to --

5           MR. DONOVAN:  I would point out also, your  
6       Honor.

7           JUDGE GILBERT:  Go ahead.

8           MR. DONOVAN:  Again, I know we'll get to this,  
9       but that does not undermine or attack the very  
10      basis of our foundational argument.

11          JUDGE GILBERT:  Right.  I regard those as  
12      separate arguments and I'll rule on them  
13      separately.

14                  Actually, before I say anything more,  
15      Mr. Anderson, I wanted to ask you, will there  
16      be -- let me preface my question.  I very  
17      definitely want a good faith answer on this.  
18      Will there be any motion to strike with respect  
19      to Ms. Timko?

20          MR. ANDERSON:  Yes.

21          JUDGE GILBERT:  All right.  Give me a flavor  
22      of it now.  You don't have to present your whole

1 argument but just summarize what the basis will  
2 be.

3 MR. ANDERSON: The flavor of it is as follows:  
4 Under the schedule in these arbitration  
5 proceedings, which are very spelled out and  
6 detailed, petitioner files direct testimony. The  
7 respondent files direct testimony. Staff files  
8 testimony, and then the rebuttal is for rebuttal  
9 staff.

10 And that was also made clear in the  
11 transcript of the case when we established the  
12 schedule that that date was for rebuttal to  
13 staff. And although you -- you know, the  
14 testimony, rebuttal testimony, in Ms. Timko is in  
15 many respects -- the questions are drafted in a  
16 way that invokes staff's name.

17 In essence, they are, through purported  
18 rebuttal to staff, submitting additional direct  
19 testimony in response to the company's testimony.

20 And we can get into it in more detail,  
21 but in general in many, if not most, of the  
22 portions of the testimony which I seek to strike



1 the information that's being brought out is not  
2 information that -- is information this certainly  
3 could have been brought out in the direct  
4 testimony filed by Sage in support of their  
5 petition.

6 So in a sense, they thought about new  
7 arguments in support of their petition and then  
8 attempted -- have attempted through the guise of  
9 rebuttal to staff to provide that additional  
10 information.

11 That's the general nature of the  
12 objection. We can go into it in more detail and  
13 rather than going line by line because I don't  
14 want to take a lot of time. So I may simply ask  
15 you now or then to consider whether that's a  
16 valid objection because I really would like to  
17 move forward.

18 But, anyway, that was what I had in  
19 mind.

20 JUDGE GILBERT: Okay. Yeah, and I'm not going  
21 to rule on it now. I just wanted to have a  
22 flavor of what's coming up and I wanted to see if

1 anything I'm doing with respect to the Sage  
2 motion is going to set a precedent with regard to  
3 yours, and I want to think about them together,  
4 if I need to.

5 It doesn't sound like I exactly need to  
6 think about them together. I mean, there may be  
7 some overlap here, but it sounds conceptually  
8 different enough that I can just go ahead and  
9 rule here.

10 All right. With respect to the first  
11 basis underlying your motion, which is SBC's  
12 purported failure to respond to data requests and  
13 the implications of that purported failure, I'm  
14 going to deny the motion.

15 Let's look at the second basis, which is  
16 absence of foundation for witness opinion. In  
17 initially reading this, I form some of the  
18 thoughts that I think Mr. Anderson also expressed  
19 a bit earlier, which is that it seems that your  
20 concerns really go to the weight of the testimony  
21 and not to its admissibility.

22 And it might be with respect to certain

1       specifics as we move forward here. I could  
2       change my mind with regard to some -- or maybe  
3       all of the particulars that you've identified in  
4       the motion, all the particular passages within  
5       Mr. Smith's testimony.

6               But my sense and the test is pretty  
7       close to what Mr. Anderson said, which is, is  
8       this witness able to testify as an expert with  
9       respect to these issues? And beyond that with  
10      respect to any particular thing that he might  
11      say, you would be able to probe the basis for  
12      that through cross-examination.

13             And I suppose there may be some sort of  
14      frontier there which is what he purports to say  
15      as an expert is sufficiently irrational on its  
16      face that we could dissociate that testimony from  
17      his status as an expert, but I think until we get  
18      there I can't really sustain your motion.

19             Is there anything more you want to say  
20      about it?

21             MR. DONOVAN: No. Just procedurally, do you  
22      wish us at the end of his testimony to renew a

1 motion to strike or should we do it -- do you  
2 want to take it under advisement, review the  
3 pleadings afterward? I don't know how you  
4 procedurally want to go forward on that.

5 JUDGE GILBERT: Well, I'm going to deny motion  
6 in its entirety now. After we're done or for  
7 that matter as we go along if you think some  
8 piece of his testimony, whether it's something  
9 you've already cited or something additional is  
10 beyond the scope of what he as an expert can  
11 address or even within that scope has gone to  
12 some sort of frontier or rationale, feel free to  
13 cite that and move to strike it.

14 But based on what you've said here and  
15 based on my own thinking about it and based on  
16 Mr. Anderson's arguments, I'm going to deny that  
17 at the present time.

18 Okay. Let's go on to Mr. Smith.

19 Off the record for just a moment.

20 (Whereupon, a discussion  
21 was had off the record.)

22 JUDGE GILBERT: Back on the record.

1                   Again, we're going a bit out of order  
2           with respect to our default rules, but that's  
3           what we have to do in order to accommodate  
4           scheduling.

5                               (Witness sworn.)

6           JUDGE GILBERT:   Mr. Anderson.

7                               ROMAN A. SMITH,  
8           having been called as a witness herein, after  
9           having been first duly sworn, was examined and  
10          testified as follows:

11                               DIRECT EXAMINATION

12                               BY

13                               MR. ANDERSON:

14          Q.   Please state your full name and business  
15          address for the record.

16          A.   Roman A. Smith, 311 South Eckert, Suite  
17          20.01 Dallas, Texas 75202.

18          Q.   By whom are you employed?

19          A.   I'm employed by SBC.

20          Q.   And what is your position with SBC?

21          A.   I'm an associate director of regulatory  
22          support with SBC.

1           Q.   In the course of your duties, did you  
2           cause certain direct testimony to be prepared?

3           A.   Yes, I did.

4           Q.   I now refer you to an exhibit which has  
5           been marked as revised Exhibit 1.0 and entitled  
6           direct testimony of Roman A. Smith on behalf of  
7           SBC Illinois and ask if this is a copy of the  
8           testimony which you caused to be prepared?

9           A.   Yes, it is.

10          Q.   Okay.  And is the information contained  
11          therein true and correct to the best of your  
12          knowledge?

13          A.   Yes, it is.

14          Q.   Did you also cause certain rebuttal  
15          testimony to be prepared?

16          A.   Yes, I did.

17          Q.   And now I'll refer you to an exhibit which  
18          has been marked as SBC Illinois Exhibit 1.1  
19          entitled rebuttal testimony of Roman A. Smith and  
20          ask if this is a copy of the testimony which you  
21          caused to be prepared?

22          A.   Yes, it is.

1           Q.   And is the information contain therein  
2   true and correct to the best of your knowledge?

3           A.   Yes.

4           MR. ANDERSON:   At this time I would move for  
5   the admission of evidence of revised Exhibit 1.0,  
6   SBC Illinois Exhibit 1.0, and SBC Illinois 1.1.

7                   I would note for the record that  
8   although the copies of the revised Exhibit 1.1 do  
9   not have revised typed on them, I think all the  
10   parties have those, they have been marked by the  
11   court reporter as revised Exhibit 1.1.

12          JUDGE GILBERT:   Okay.   With respect to that,  
13   there was an electronic filing of the earlier  
14   version of Mr. Smith's direct.

15          MR. ANDERSON:   Yes.

16          JUDGE GILBERT:   And there was one earlier  
17   version; correct?

18          MR. ANDERSON:   That's correct.   And that  
19   electronically filed earlier version has been  
20   superseded by the version that we're offering  
21   today.

22          JUDGE GILBERT:   Okay.   So I'll say for the

1 transcript and I hope it works out in practice  
2 that we will disregard the earlier filing. They  
3 will not be part of our record and what is being  
4 characterized a revised and will be what I submit  
5 to the record now in hard copy form will be in  
6 the record, assuming that it's not kept out of  
7 the record pursuant to objection.

8 All right. Is there any objection to  
9 the admission of either SBC 1.0 or 1.1?

10 MR. DONOVAN: None from Sage, your Honor.

11 MR. LANNON: Staff has no objection, your  
12 Honor.

13 JUDGE GILBERT: Okay. Those exhibits are  
14 admitted.

15 (Whereupon, SBC Exhibit  
16 Nos. 1.0 and 1.1 were  
17 admitted into evidence.)

18 JUDGE GILBERT: I guess Mr. Smith is available  
19 for cross-examination. Who wants to start?

20 MR. DONOVAN: Does staff have cross?

21 MR. LANNON: I've got just a few and I'd  
22 prefer to follow you up actually.



1           MR. DONOVAN: All right.

2                   CROSS-EXAMINATION

3                   BY

4                   MR. DONOVAN:

5           Q. Good afternoon, sir.

6                   Just so that I'm clear, in terms of

7           Exhibit 1, your revised direct testimony, the

8           only change in the text of your prefiled

9           testimony is on Page 18?

10          A. Yes, that's correct.

11          Q. Okay. And there's also changes to your

12          attachment.

13          A. Yes.

14          Q. All right. Thank you.

15          JUDGE GILBERT: Thank you for that question,

16          Mr. Donovan. And I should have asked that, so

17          I'm glad you did.

18          BY MR. DONOVAN:

19          Q. Have you reviewed the testimony exhibits

20          of Ms. Timko in preparation for this hearing?

21          A. Yes, I have.

22          Q. And you've reviewed the petition and the

1 exhibits attached to that?

2 A. Yes, I have.

3 Q. Is it SBC's position that billing and  
4 collection services should be a regulated service  
5 subject to the review of the state Commission?

6 A. I'm sorry, repeat your question.

7 Q. Is it SBC's position that billing and  
8 collection services should be a regulated service  
9 subject to the review of the state Commission?

10 MR. ANDERSON: I'll object on the grounds that  
11 it calls for a legal opinion.

12 JUDGE GILBERT: Overruled.

13 THE WITNESS: My answer to the question -- let  
14 me answer the question, billing -- these are not  
15 billing and collection services. These are ABS  
16 services.

17 So I need to characterize it. In other  
18 words, we've already -- the collection of -- the  
19 practice of collecting for ABS services, yes,  
20 should be in the ICA and under the Commission  
21 rules.

22

1 BY MR. DONOVAN:

2 Q. Is ABS an unbundled network element?

3 A. No.

4 Q. Is it -- what is ABS?

5 A. Well, ABS, they are alternative bill  
6 services. We call them alternative bill services  
7 incollects. They're collect calls. There are a  
8 number of billed calls, calling card calls.

9 Q. Is it your opinion that ABS are a  
10 telecommunication service provided to an end  
11 user?

12 A. ABS is inherent to the local line.  
13 They're inherent to local telecommunication  
14 services.

15 Q. So your answer is yes or no?

16 A. Can you ask the question again.

17 Q. Is it your opinion that ABS services are  
18 telecommunication services?

19 A. And the reason why I hesitate on this  
20 because I know there's legal rounds around  
21 telecommunication services, but I can say without  
22 being a lawyer, ABS -- I mean, yes, if they

1       are -- yes, they're telecommunication services  
2       that our end users are able to use them as  
3       telecommunication services as part of the local  
4       line.

5           Q.   SBC's end users are able to do that?

6           A.   SBC's end users are able to do it, our  
7       CLEC end users are able to. All end users are  
8       able to pick up a local dial tone line and either  
9       make a collect call or accept a collect call.

10          Q.   So you indicated earlier that it's your  
11       position that billing and collection services  
12       should be incorporated into an interconnection  
13       agreement; correct?

14          A.   Let me clarify that again. I didn't say  
15       that. Billing and collection services are  
16       different. I mean, this is ABS. The billing and  
17       collecting for ABS local charges, yes, should be  
18       a part of interconnection agreement.

19          Q.   So then is it your opinion then that  
20       billing and collection services for SBC  
21       affiliates should be -- are considered to be  
22       subject to the regulation of the Commission?

1           MR. ANDERSON: I'm going to object on the  
2 grounds of vagueness. You need to specify  
3 billing and collection services for what, ABS,  
4 interexchange calls?

5           MR. DONOVAN: I meant limits to ABS, I'm  
6 sorry.

7           MR. ANDERSON: And the second part of my  
8 vagueness objection is that there's -- you're not  
9 identifying a specific affiliate, data affiliate,  
10 IXC affiliate, some other kind of affiliate?

11                       So the question is vague.

12 BY MR. DONOVAN:

13           Q. Well, let's use the example of operator  
14 services then.

15           A. Ask your question again. I'm sorry.

16           Q. Is it your opinion -- or SBC's opinion  
17 that billing and collection agreements between  
18 SBC and its affiliated operator services  
19 affiliate should be subject to the regulation of  
20 the Commission?

21           A. I'm confused by your answer (sic) by  
22 operator services because there's a lot of --

1           Q.   You've testified that you believe that the  
2           billing and collection terms for ABS services  
3           between Sage and SBC should be part of the  
4           interconnection agreement and subject to the  
5           Commission's regulation.

6           A.   Billing and collection ABS charges should  
7           be on a local -- on the local side.  I mean, in  
8           other words, for local intraLATA toll calls.

9           Q.   So those services should be regulated?

10          A.   Yes.  Just like all other services are  
11          regulated --

12          Q.   So billing and collection services between  
13          SBC and any of SBC's affiliates for ABS services  
14          should also be regulated?

15          MR. ANDERSON:  I'm going to object on the same  
16          grounds, any of SBC's affiliates.  You're not  
17          being specific enough.

18          JUDGE GILBERT:  Do you want me to make a call?

19          BY MR. DONOVAN:

20          Q.   Well, let's try to narrow it down then.

21                  SBC's interLATA services affiliate.

22          A.   Okay.  Before -- let me answer that

1 question this way: That's a whole different  
2 world than we're talking about today. Those  
3 business practices are totally separate from what  
4 we're talking about when we talk about local.

5 Q. You do agree though that there are -- that  
6 SBC Illinois does perform billing and collection  
7 services for its affiliates for providing  
8 telecommunications services?

9 A. For our interexchange -- for interexchange  
10 carriers, for our data carriers, yes, that is  
11 correct.

12 Q. Okay. And it's your position that those  
13 billing and collection services for your -- for  
14 those two -- the two examples, the affiliates you  
15 just gave, should those services be regulated?

16 A. Regulated by whom?

17 Q. Regulated under the Federal  
18 Telecommunications Act.

19 A. Well, from what I'm talking about today in  
20 regards to the Federal Telecommunications Act,  
21 I'm talking about the local side. That -- you're  
22 talking about interexchange. So that's under

1       271. That's under -- you know, that's under a  
2       different regime.

3       Q. I'm referring to the services SBC Illinois  
4       performs to its affiliates for long-distance,  
5       should those services be regulated for billing  
6       and collection of ABS services?

7       MR. ANDERSON: I'm going to object. Beyond  
8       the scope and asks for legal opinion. Mr. Smith  
9       states at Page 7, Lines 153 to 154, I am not a  
10      lawyer and, therefore, will not comment on Sage's  
11      jurisdictional assertions.

12      JUDGE GILBERT: All right. Well, let me say  
13      with regard to that particular objection and more  
14      generally, I have very little patience for the  
15      objection that the witness is not a lawyer when  
16      the witness is an employee of a highly-regulated  
17      industry and is testifying not on the basis of  
18      any other expertise except that employment within  
19      the context of that highly-regulated industry.

20               And based on the experience of working  
21      as an employee within that highly-regulated  
22      industry, implementing and carrying out statutes,



1 regulations and the orders of various commissions  
2 on a daily basis, then the witness is telling us  
3 what his understanding is of those various  
4 authorities. And if he's not able to do that,  
5 then we can throw all of his testimony away.

6 So the fact that he's not a lawyer  
7 really doesn't matter to me unless he's being  
8 asked specifically to give a definitive legal  
9 opinion in the manner of a lawyer.

10 So I hope that will put to rest for  
11 everyone the objection that the witness is not a  
12 lawyer.

13 Is there another basis?

14 MR. ANDERSON: Yes. As I indicated, I had an  
15 objection that it was outside the scope. He  
16 wasn't testify on the jurisdiction or whether  
17 billing and collection services -- interstate  
18 billing and collection services are regulated by  
19 the Federal Communications Commission.

20 JUDGE GILBERT: Okay. Was that your question?

21 MR. DONOVAN: I'm trying to -- what I was  
22 trying to do in the grand scheme of things is

1       trying to allow for your review and the  
2       Commission's review of how SBC treats Sage and  
3       how SBC -- and the terms -- for terms of billing  
4       and collection and how SBC treats its affiliates  
5       for terms of billing and collection.

6               One distinction between the two is that  
7       they are in their position today advocating that  
8       the terms of billing and collection be  
9       incorporated into an interconnection agreement  
10      subject to the regulations of this Commission.

11             However, they do not -- they are not  
12      making such a similar statement with regard to  
13      regulation of their billing and collection  
14      services for their affiliates at any regulatory  
15      level. And I think that's a distinction that  
16      needs to be clear in the record.

17             JUDGE GILBERT: Okay. Well, you can make that  
18      argument but I'm not sure how that argument is  
19      filtered through the specific question you asked.  
20      In fact, I no longer remember the specific  
21      question you ask.

22             MR. DONOVAN: I think we're all having that

1       problem at this point, your Honor.

2           JUDGE GILBERT:   So --

3           MR. DONOVAN:   Let's move on --

4           JUDGE GILBERT:   -- I'll overrule part of the

5       objection.  Of the other part, I really don't

6       know any more.  So let's forget the question that

7       was already asked and ask another one.

8           MR. DONOVAN:   All right.

9       BY MR. DONOVAN:

10       Q.  Is it SBC's position that its billing and

11       collection agreements between it and its

12       interLATA affiliate should be subject to the

13       terms of a Section 252 interconnection agreement

14       and approved as a regulated service?

15                       Yes or no?

16       A.  No, because that's interexchange and that

17       would not fall into the scope of being under 251

18       or 252 and regulated by this Commission.  That's

19       outside of 251, 252.

20       Q.  How about under Section 271 of the Federal

21       Telecommunications Act?

22       A.  To be honest, I'm not familiar.  I'm on

1       the local side. I'm not on the 271 side. But, I  
2       mean, I do understand that there's billing and  
3       collection services and those -- those are a  
4       whole different environment, whole different  
5       worlds.

6               What I'm here to talk about is how we  
7       operate between -- on the local side under 251,  
8       252 that's what my testimony is about.

9       Q. So your testimony is that billing and  
10      collection services on the local side should be  
11      regulated but you have no position with respect  
12      to whether billing and collection services for  
13      interLATA services should be regulated?

14      A. That's correct. The services should be  
15      regulated under 251, 252 as they always have been  
16      in our industry.

17      Q. How about intra, i-n-t-r-a, LATA  
18      affiliate.

19      A. IntraLATA toll?

20      Q. Correct. Will billing and collection  
21      services for ABS services for SBC's intraLATA  
22      toll services be subject to an interconnection

1       agreement and approved as a regulated service?

2           A.   The billing and collection of intraLATA  
3       tolls, yes, should be under Section 251, 252.  
4       That's local.

5           Q.   SBC Illinois does not have an affiliate  
6       that provides intraLATA toll services in the  
7       state of Illinois?

8           A.   Ask that question again.  I'm sorry.

9           Q.   Does SBC Illinois have an intraLATA toll  
10      service affiliate in the state of Illinois to  
11      provide intraLATA services?

12          A.   Are you talking -- are you referring to  
13      our long-distance affiliate?

14          Q.   I'm referring -- I'm asking you if there  
15      is an affiliate of SBC Illinois that performs  
16      intraLATA toll services.

17          A.   SBC Illinois provides intraLATA toll  
18      services.

19          Q.   Okay.  So SBC Illinois also provides local  
20      exchange services; right?

21          A.   That's correct.

22          Q.   And what is your understanding of the

1 meaning of local exchange services?

2 Is there a mileage range that delineates  
3 between local exchange and another type of  
4 exchange?

5 A. Local exchange is by the boundaries of --  
6 that are set up by the FCC and that this  
7 Commission has approved.

8 Q. And for SBC Illinois, what is -- what has  
9 the ICC approved to be deemed local service?

10 A. Well, anything that's. . .

11 Q. Please answer.

12 A. Anything that's within the LATA or within  
13 the intraLATA scope that's within the boundaries  
14 of what's local for Illinois.

15 Q. And that's my question. What is local for  
16 Illinois?

17 MR. ANDERSON: I would object. This really is  
18 getting beyond. He's not testifying about the  
19 exchange boundaries in Illinois of the local  
20 calling areas in Illinois.

21 MR. DONOVAN: He's giving an opinion about the  
22 local services that SBC Illinois provides.

1 JUDGE GILBERT: Well, I can't tell if it's  
2 beyond the scope or not. I'm assuming it's some  
3 kind of foundational question, but we're not  
4 really getting anywhere with it. And I'm not  
5 sure you're ever going to get to the larger point  
6 you're trying to make.

7 Let me ask the witness.

8 EXAMINATION

9 BY

10 JUDGE GILBERT:

11 Q. He's asking you if you know the mileage  
12 distinction between local and local toll in  
13 Illinois. Do you or don't you?

14 A. I don't know.

15 JUDGE GILBERT: Okay. Did you get --

16 MR. ANDERSON: Now I understand the question.

17 JUDGE GILBERT: I think that was the question.

18 CONTINUED CROSS-EXAMINATION

19 BY

20 MR. DONOVAN:

21 Q. Okay. Is it your opinion then that the  
22 only distinction between regulation of billing

1       and collection services for ABS services is if  
2       it's intra- versus interLATA?

3           A.   No.   I don't think I answered it that way.  
4       My answer was that the billing and collection of  
5       a ABS services as part of the inherent -- as ABS  
6       services are inherent to the local line are  
7       subject to 251, 252 just like you pick up the  
8       local line and you're able to call in turn,  
9       you're able to do a DA call, you're able to make  
10      an ABS call, you're able to accept an ABS call.

11           All those services are our  
12      interconnection agreements where they have been  
13      for years and they're subject to the Commission's  
14      rules under 251, 252.   They're local.

15           Q.   Do you agree that your pay phone affiliate  
16      would create local incollect traffic?

17           MR. ANDERSON:   I'm going to object on lack of  
18      foundation there for the term pay phone  
19      affiliate.   Are you referring -- are you  
20      suggesting that there's an affiliate of SBC  
21      Illinois --

22           MR. DONOVAN:   Let me rephrase.



1 BY MR. DONOVAN:

2 Q. Would you agree that pay phones -- that

3 the SBC pay phone division would have traffic

4 that is local and collect traffic?

5 A. Yes, I would agree with that.

6 Q. Does your pay phone division also create

7 interLATA incollect traffic?

8 A. I'm sure they do. Yeah, I'm sure they do.

9 I'm sure our pay phone does.

10 Q. Should the billing and collection services

11 for both of those type of calls be a regulated

12 service for ABS services?

13 MR. ANDERSON: Are you asking outside the

14 context of an interconnection agreement or just

15 in a vacuum or general?

16 MR. DONOVAN: I'm asking right now in general.

17 THE WITNESS: Can you ask the question again.

18 MR. DONOVAN: Can you read that question back

19 please.

20 (Whereupon, the record was

21 read as requested.)

22 THE WITNESS: Both the calls?

1 BY MR. DONOVAN:

2 Q. The pay phone originated local traffic and  
3 pay phone originated interLATA traffic.

4 A. Well, pay phone local traffic originated  
5 local traffic would be subject to the  
6 Commission's rules. InterLATA is not under 251,  
7 252.

8 Q. So it should not be regulated?

9 A. It should not be regulated under 251, 252.  
10 That's what I'm discussing today.

11 Q. Okay. Should interexchange traffic --  
12 intrastate, interexchange and collect call,  
13 working under that assumption, should that  
14 billing and collection services for that  
15 interexchange traffic be regulated?

16 A. As what I'm discussing today, not under  
17 251, 252 for which we're talking about today. I  
18 think we're talking about local. We're talking  
19 about traffic --

20 Q. So the distinction you're making is that  
21 incollect -- ABS services -- billing and  
22 collection services for local ABS services should

1       be regulated. Billing and collection services  
2       for anything outside of local traffic should not  
3       be regulated?

4           A. I didn't say that. I said for what my  
5       discussions are today, I'm discussing that for  
6       what we're here for today is traffic regulated  
7       under 251, 252 and will be local, not  
8       interexchange.

9           MR. DONOVAN: Can I have one second.

10          BY MR. DONOVAN:

11           Q. Let's try moving on. In the proposed ABS  
12       appendix attached to your revised direct  
13       testimony?

14           MR. ANDERSON: What was the page reference?  
15       I'm sorry.

16           MR. DONOVAN: I haven't gotten to a page yet.  
17       The proposed ABS appendix.

18          BY MR. DONOVAN:

19           Q. Attached to Mr. Roman -- or Mr. Smith's  
20       revised direct testimony.

21                   Generally speaking, that ABS appendix  
22       provides a CLEC with three options for incollect

1       calls; is that correct?

2           A.   That is correct.

3           Q.   Turning to Option 2, which is Section 2.3,

4   I have it on Page 6 of 11.

5           A.   Okay.  I'm there.

6           Q.   Can you briefly explain Option 2 as it's

7   red lined or as it's been modified.

8           A.   Sure.  Without going into -- let me

9   briefly explain this.  Basically Option 2, it is

10   an option that basically what would happen -- let

11   me kind of start over -- let me kind of explain

12   how this whole scenario works out because it's

13   better for me.

14                   Basically when an SBC originating call

15   terminates -- a collect call terminates to a Sage

16   end user, the end user accepts it, the charges.

17   We pass along that DUF to the Sage -- to Sage to

18   bill their end user.

19                   And what Option 2 does is basically it's

20   saying that Sage, as we have done in industry

21   practice for years and we've done with other

22   CLECs and other ILECs and the local side and any

1     other kind of traffic that's on that DUF, you  
2     place on your bill, you charge it to your end  
3     user. Your end user pays back.

4             Now, what happens is -- what we've  
5     decided -- what we did to try to alleviate  
6     situations where we have carriers that for some  
7     reason or another recourse just every single  
8     thing back to us, so it seems like none of their  
9     carriers seem to be paying anything on the ABS  
10    side, we said, Well, we really need some type of  
11    cap.

12            So with this option, you're able to  
13    recourse back to us up to 35 percent. And in the  
14    course -- in my testimony, as I explained, that,  
15    you know, an industry standard is that, you know,  
16    there is an uncollection rate with these type of  
17    charges because these type of charges are being  
18    used by some consumers that may not pay. There's  
19    a range there so we said, well, to make this more  
20    lucrative for the carriers, we would increase  
21    that above that where there's a little bit of  
22    some margin there that they could use for

1       themselves to pay for billing or charges,  
2       whatever else.

3               But in any way, that's what happens.  
4       They can recourse up to 35 percent.   The  
5       interesting thing about Option 2 is that they do  
6       have to send us back the records.   That's the  
7       difference between this and accounts receivable  
8       option.

9               In this option --

10       Q.   Well, since we're short on time, let me  
11       get to the gist of my questioning.

12              Under Option 2, what is the billing and  
13       collection service fee that SBC would credit to  
14       Sage for performing the billing and collection  
15       services?

16       A.   It would be the industry standard of 5  
17       cents per billed message.

18       Q.   What industry are you referring to when  
19       you say that?

20       A.   I'm referring to the LEC to LEC industry,  
21       the ILEC to ILEC industry, the local industry in  
22       exchange of records as we've always done for many

1 years.

2 Q. Do you have any -- is there a handbook out  
3 there that describes this industry standard?

4 A. What I mean by industry standard -- and  
5 let me rephrase that -- not rephrase it but let  
6 me explain that, what I mean by industry standard  
7 it's my -- through my job as I have to review  
8 contracts and I have to review contracts between  
9 us and other carriers and us and ILECs and us and  
10 other CLECs and, and facilities-based providers  
11 resell providers and through the industry what I  
12 can see, through us and all the other RBOCs,  
13 we've always paid 5 cents. Well, 3 to 5 cents,  
14 but in that range. We've always paid that  
15 billing and collection fee.

16 Q. Do you have any understanding as to what  
17 Verizon pays Galaton River for ABS billing and  
18 collection services?

19 A. I don't work for Verizon or Galaton.

20 Q. So your industry standard would be limited  
21 specifically to SBC?

22 A. No, I wouldn't say that because I've

1       actually worked with people from Bell South and  
2       Verizon that pay -- Bell South pays for Bell  
3       South -- I mean, Verizon pay Bell South 5 cents,  
4       Bell South pays Verizon. So there's other  
5       situations, but I don't know that particular  
6       contract.

7           Q. How much does SBC charge a third-party for  
8       billing and collection services?

9           MR. ANDERSON: Define bill third-party for  
10      purposes of the question. The question is vague.  
11      I object to that.

12          MR. DONOVAN: I believe third-party is defined  
13      in the ABS appendix. Any person other than a  
14      party to the ABS appendix.

15          THE WITNESS: Ask the question again.

16      BY MR. DONOVAN:

17          Q. How much does SBC charge a third-party for  
18      billing and collection services?

19          A. Well, I can give an example. Maybe that  
20      might clarify. Third-party, I would say, Verizon  
21      would be a third-party.

22                  Verizon sends a message over to SBC.



1 Verizon pays us 5 cents. If we send a message to  
2 Verizon, we pay them 5 cents.

3 Q. What about SBC's pay phone division? What  
4 is the billing and collection fee that SBC  
5 assesses its pay phone division for billing and  
6 collection of SBC services?

7 MR. ANDERSON: I'm having difficulty  
8 understanding. Are you talking about billing the  
9 pay phone SBC, billing it's pay phone division  
10 for a call accepted by the pay phone?

11 I'm not sure what you mean.

12 THE WITNESS: That's --

13 MR. DONOVAN: I'll withdraw the question.

14 BY MR. DONOVAN:

15 Q. Can you tell me, please, how much SBC  
16 charges MCI, for instance, for ABS billing and  
17 collection services?

18 A. Well, MCI local, we pay them 5 cents.

19 Q. MCI interexchange?

20 A. I'm not sure. This is not -- I mean, I  
21 just know interexchange --

22 Q. If MCI passes through -- you've testified

1       these third-parties pass through a DUF to SBC and  
2       SBC passes that charge through to Sage. How much  
3       does SBC charge that third-party for submitting  
4       that DUF?

5       A. We don't charge them.

6               In other words, MCI local is passing  
7       that rated DUF message to SBC. They are paying  
8       us and then we are in turn going to -- here's the  
9       situation how it works.

10              Let me use MCI local, for example. MCI  
11       local, if their customer makes a -- picks up the  
12       phone, makes a collect call to SBC end user, our  
13       user accepts that phone call, MCI, based upon  
14       their own tariff rates, who knows, they may  
15       charge a dollar for that call, they may charge  
16       \$10 for that call. That's up to them. They have  
17       to file those tariffs.

18              That call is going to come to SBC.  
19       Let's just use \$10 for ease of sake here. They  
20       are going to pay us 5 cents. They are going to  
21       send that rated DUF to us.

22              Immediately SBC is going to pay MCI the

1       \$10 for that charge because we own those records.  
2       Those records belong to SBC. And at that time,  
3       we're going to pass that along to our own  
4       customer. That's what happens in the industry.

5       Q. What does -- what's the call record charge  
6       SBC assesses to MCI, for instance, on a 1-800  
7       collect call?

8       A. You're talking about a whole different  
9       world now. You're talking about --

10      Q. Is MCI --

11      A. -- 1-800 platforms.

12      Q. Is a call --

13      MR. ANDERSON: I'm sorry, could we have --  
14      allow the witness to answer the question,  
15      complete his statement. I believe he was  
16      answering the question.

17      JUDGE GILBERT: Are you dropping that question  
18      and asking another one or do you still want an  
19      answer to --

20      MR. DONOVAN: In an effort to get  
21      cross-examination done by the time that he has to  
22      leave, I attempted to interrupt so that we could

1 narrow down the question a little bit. Sorry  
2 about that.

3 JUDGE GILBERT: All right. Ask the new  
4 question.

5 MR. DONOVAN: Thank you.

6

7 BY MR. DONOVAN:

8 Q. Sorry. I've lost my train of thought.

9 What does the call record charge  
10 assessed to MCI for a 1-800 collect call that is  
11 terminated -- or that is passed through --  
12 terminated to SBC?

13 A. I don't know that because that's a whole  
14 different world. You're talking about 1-800  
15 platforms. Those are IXC type arrangements,  
16 billing and collection arrangements that I think  
17 we were talking about several questions ago.

18 That's a whole different world. That's  
19 not local, that's not local industry standard.  
20 That's not how we work with Verizon. That's not  
21 how we work with other CLECs or other carriers on  
22 the local front.

1           Q.   What if it's a 1-800 call on an intraLATA  
2   basis?

3                   Under that situation, what would the  
4   call record per message charge --

5           A.   That's still under that whole 1-800  
6   platform.   That's still on that 1-800 platform,  
7   and I don't know those agreements, I mean, as far  
8   as -- you know, there's all types of different  
9   possibilities.

10          Q.   Oh, so you're not familiar.   For the  
11   agreements, there may be a completely different  
12   rate under that industry standard?   You don't  
13   know?

14          A.   That's not the industry I'm talking about.  
15   I'm talking about -- that's IXC.   The IXCs have  
16   different industry standards.

17                   They have -- and we're not trying --  
18   there are different agreements that SBC enters in  
19   with AT&T IXC, with MCI IXC; but those are  
20   different.   Those are interexchange type  
21   arrangements.   Those are totally different  
22   because we have AT&T and MCI.   We enter into a

1 whole different type of agreement for ABS on the  
2 251, 252 than we enter in with them under their  
3 IXC platform or their 1-800 platform. Those  
4 arrangements have always been different.

5 Q. Does SBC pass through to Sage for billing  
6 and collection of ABS charges message -- messages  
7 from SBC affiliates?

8 MR. ANDERSON: Did you ask about SBC Illinois  
9 and what they do now?

10 MR. DONOVAN: Yes.

11 THE WITNESS: No, we don't.

12 BY MR. DONOVAN:

13 Q. Are you familiar -- or what is the rate  
14 for a billing and collection of ABS services that  
15 Galaton River assesses to SBC?

16 A. I don't know that.

17 Q. Isn't that an interLATA call?

18 A. What call?

19 Q. A call from SBC -- from an SBC end user to  
20 a Galaton River end user. Would that be an  
21 interLATA call?

22 A. You said inter?

1           Q.    I-n-t-e-r LATA.

2           A.    I don't know.  Do you have -- I don't know

3           the numbers that you're calling from to who.

4           Q.    Going back to Option 2, are you familiar

5           with what the telecom industry standard for

6           pricing -- you've testified that, in your

7           opinion, the industry standard for pricing for

8           billing and collection of SBC services is 3 to 5

9           cents?

10          A.    Yes.

11          Q.    Is that safe?

12          A.    Yes.

13          Q.    What is the billing and collection rate

14          that SBC charges to its affiliates for billing

15          and collection services under your affiliate

16          billing and collection agreements?

17          A.    Again, you're talking a whole different

18          world.  You're talk IXC affiliates and IXC type

19          agreements.  That's not under 251, 252.  Those

20          are different.  I don't know exactly what those

21          rates are.

22                 I think -- if they're the rates that you

1 guys proposed in your red line to this petition,  
2 then I guess those are the rates. But those are  
3 different. We're not -- those are different  
4 agreements.

5 Q. Do you agree that Sage will experience  
6 cost associated with billing and collection for  
7 SBC's ABS services?

8 A. I don't want to speculate but I wouldn't  
9 see it as any different than what our other  
10 carriers have always done for years because -- I  
11 mean, just to let the staff know, if they get a  
12 DUF and the DUF has -- the DUF is a daily usage  
13 fee and it goes to them every day on the UNE-P  
14 side and it has all the charges. It has DA. It  
15 has, you know -- or it has ABS charges. It has  
16 900, 976.

17 In other words, they put all those  
18 others charges on their end user bill; so what  
19 our other carriers have always done is they  
20 plopped that charge on there, too. It's been no  
21 different.

22 I think the situation here is -- we



1       don't understand. We're not trying to treat them  
2       any different than we've always treated our other  
3       carriers.

4           Q. Under Option 2, it's my understanding that  
5       Option 2 would allow a carrier such as Sage to  
6       submit up to 35 percent of the ABS charges as  
7       uncollectible; is that correct?

8           A. That is correct.

9           Q. Can you explain what happens if the actual  
10       uncollectible rate for SBC's ABS traffic that  
11       Sage experience is greater than 35 percent?

12          A. Then they would not be able to recourse  
13       that.

14          Q. And, in fact, they would end up having to  
15       eat the difference?

16          A. Sure. Just to let you know, you know, on  
17       the ILEC to ILEC agreements and LEC to LEC  
18       arrangements, we don't have recourse rights.

19          Q. Would you agree that --

20          A. I'm just saying, we don't have recourse  
21       rights. So we believe that 35 percent was way  
22       above what even the industry provides.

1                   When we get messages from Verizon, if  
2           our customers don't pay, that's a Verizon rated  
3           charge, we eat it. We don't get to recourse that  
4           back to Verizon. That's not how the industry  
5           ever worked.

6           Q.   That situation you just talked about  
7           briefly there, that would be an ILEC to ILEC  
8           situation?

9           A.   That's correct.

10          Q.   Okay. Would you agree that under Option 2  
11       Sage is liable for all ABS charges issued to it  
12       by SBC including third-party calls charges less  
13       the 35 percent uncollectible rate?

14          A.   Yes, that is correct. But let me say  
15       something about the third-party. Third-party is  
16       a very low percentage. I mean, we're talking  
17       less than 6 percent. I mean, we're talking very  
18       low. This is not a big deal.

19          MR. DONOVAN: Your Honor, I move to strike  
20       that as unfounded, without foundation. There's  
21       no evidence in the record to support that  
22       conclusion.

1           MR. ANDERSON: Well, I mean, that was his  
2 testimony. So I don't hear a valid objection.

3           MR. DONOVAN: His testimony was that  
4 third-party calls are of small amount. I don't  
5 remember reading that his testimony.

6           MR. ANDERSON: I'm sorry, I don't understand  
7 the objection. Mr. Smith made a statement and it  
8 was objected to on the grounds that it's not  
9 evidence. I don't understand the objection.

10          MR. DONOVAN: Objection on grounds that  
11 there's no foundation to make that assertion.

12          JUDGE GILBERT: Well, I can't sustain that  
13 objection.

14          BY MR. DONOVAN:

15           Q. Would you agree that under Option 2 --  
16 well, we've already talked about that Sage --  
17 state for me again your opinion as to whether or  
18 not Sage will experience additional costs  
19 associated with billing and collection of ABS  
20 services Option 2. I don't remember what your  
21 answer was.

22          MR. ANDERSON: The question -- I'm sorry, I

1 will withdraw it.

2 THE WITNESS: Well, I mean, I think I said  
3 earlier it's asking me to speculate. I know Sage  
4 has said that it costs them -- they put in some  
5 costs in their testimony that it costs them  
6 something, but we also got to realize that it  
7 costs them something because they go out of their  
8 way to place these charges on a whole separate  
9 bill, whole separate mailing, a whole separate  
10 thing; so their end users are getting two whole  
11 separate bills and; so, I mean, I imagine their  
12 costs are -- I'm sure they have a cost for that.  
13 But we have other carriers that just plop the  
14 charges on their local bill like they've always  
15 done.

16 BY MR. DONOVAN:

17 Q. Would you agree that under Option 2 Sage  
18 must cover the cost of billing the end user,  
19 postage and so forth?

20 A. Just like they cover the cost of billing  
21 all their other local services.

22 Q. Would you agree that under Option 2 Sage

1       would have the -- Sage would receive costs  
2       involved with processing dispute claims for SBC's  
3       ABS charges?

4           A.   That was -- just repeat that question.

5           Q.   Would you agree that under Option 2 Sage  
6       would be assessed costs associated with  
7       processing the -- customer complaint claims  
8       regarding SBC's ABS charges?

9           A.   Yeah.  And, like, if you want to go into  
10      the dispute --

11          Q.   I'm asking you whether or not they have  
12      costs.

13          A.   I'm sure they do as --

14          Q.   Thank you.

15          A.   -- as a business but they also get 35  
16      percent discount.

17          Q.   Handling -- would you agree that under  
18      Option 2 Sage would have to cover the costs of  
19      collections for follow-up bills and so forth?

20          A.   It should be no different than what their  
21      other local services offer.

22          Q.   So in spite of all these costs that you

1 are, I believe, agreeing would exist, it's your  
2 testimony today that in spite of these costs,  
3 under Option 2, Sage is only provided a one-time  
4 5 cent credit for this billing and collection  
5 service?

6 A. Plus 35 percent of recouring rights.  
7 That's tremendous for -- we -- just to let you  
8 know, there is no other ILEC in the country that  
9 offers a percentage like this to their carriers.

10 Q. Is Sage an incumbent local exchange  
11 carrier?

12 A. No, they are not.

13 Q. Let's move on to Option 3, which is on the  
14 next page of your appendix, Page 7.

15 A. Okay.

16 Q. Under this Option 3, Sage would be  
17 responsible but purchase all the accounts  
18 receivable and be responsible for up to 70 --  
19 would pay 70 percent of the total amount of the  
20 charges; is that correct?

21 A. That's correct.

22 Q. And that would include third-party

1 traffic?

2 A. That's correct.

3 Q. Under Option 3, how often are their  
4 accounts receivable purchased by Sage?

5 A. Sage has never purchased any accounts  
6 receivable.

7 Q. Under Option 3, how often would they have  
8 to purchase that account receivable?

9 A. Under Option 3, how Option 3 works is  
10 that -- let me -- because I think I was trying to  
11 explain earlier and I got cut off; but just --

12 JUDGE GILBERT: Mr. Smith, just answer his  
13 question.

14 THE WITNESS: Well, Option 3, is just an  
15 accounts receivable where they don't have to do  
16 anything else. In other words, they just buy the  
17 accounts receivable with the discount.

18 BY MR. DONOVAN:

19 Q. And how often do they have to purchase  
20 that accounts receivable?

21 A. They choose it one time. In other words,  
22 this is part of their interconnection agreement.

1       They choose Option 3 and this is what they get  
2       billed on every month, minus their discount.

3           Q.   Is it billed weekly, twice a week?   How  
4       often is it -- are the bars presented to Sage for  
5       billing?

6           A.   Well, they get a daily usage fee that has  
7       the charges for their ABS to their end users.  
8       Now, as far as the bill, I think it's on a  
9       monthly basis.   June is the one that stands out,  
10      but I think it's on a monthly basis.

11          Q.   On a monthly basis.   Okay.

12                Did you testify -- is it your testimony  
13      that Sage purchases the accounts receivable upon  
14      entering this?   They don't do it on a monthly  
15      basis?

16          A.   This is -- in other words, they have three  
17      options and their three option are part of their  
18      agreement.

19          Q.   Okay.   Could I point you to Section  
20      2.4.2.2.

21          A.   Okay.

22          Q.   It says, once purchased as an account



1 receivable, CLEC shall not adjust, deduct, debit  
2 or otherwise attempt to recourse back to SBC any  
3 uncollectible ABS charges regardless of whether  
4 the end user disputes the ABS charges accuracy,  
5 declares financial insolvency or otherwise  
6 refuses to pay CLEC invoices.

7           So it appears to me, on reading that,  
8 that that is triggered upon the purchase of an  
9 account receivable. My question is: When is  
10 that account receivable purchased?

11         A. Choose the account -- I'm sorry. You  
12 choose an accounts receivable option when you get  
13 into the agreement, so, therefore, on a monthly  
14 basis -- and just for easy sake, you have a  
15 \$100,000 bill of all the charges we send Sage,  
16 it's going to minus 30 percent. So they're going  
17 to have a \$70,000 bill to send us back.

18         Q. And it's when that \$70,000 bill is issued  
19 to Sage, that's when they purchase that account  
20 receivable?

21         A. They purchase it by when they chose the  
22 option.

1           Q.   So once they choose this option then, Sage  
2           would be precluded from adjusting, deducting,  
3           debiting or otherwise attempting to recourse back  
4           to SBC any uncollectible ABS charges; is that  
5           correct?

6           A.   Yes, because they're getting a 30 percent  
7           discount. I would hope that they would not have  
8           any uncollectibles beyond 30 percent.

9           Q.   So if I understand your answer correctly  
10          then, Sage is not able to make an adjustment to  
11          an account that they have purchased from SBC  
12          under Option 3 even if that is a result of an end  
13          user dispute?

14          A.   Yes. They're getting a 30 percent  
15          discount.

16          Q.   So, for instance, if SBC sends an account  
17          receivable to Sage and Sage purchases to Sage  
18          that includes an incollect charge to an end user  
19          that that end user disputes and with grounds  
20          perhaps that call wasn't made, SB- -- Sage would  
21          still have to eat the cost of that -- we need  
22          65 -- Sage would eat 65 percent of the cost of

1       that incorrectly billed account receivable?

2       A. I'm sorry, did you go back to Option 2?

3       Q. No, I'm on Option 3. Still in Section

4       2.4.2.2?

5       A. Oh, you said 65 percent.

6       Q. Okay. Correction. I'm sorry. I meant 70

7       percent. You're right. I apologize for that.

8       A. Well, just to let you know, this is --

9       2.4.2.2, just to clarify, this is subsequent to

10      2.4.2.1. So this is after all the adjustments.

11               So, in other words, there are going to

12      be adjustments for -- some DUFs may have billing

13      errors. There may be rejects. There may be

14      duplicates. There may be some adjustments that

15      need to be made. So if you like 2.4.2.1, this

16      after you've gone through this whole process,

17      then there is no more recourse.

18      Q. Okay. Taken that to be truth, under

19      Section 2.4.2.1, can you point to me the line

20      item that includes end user disputes?

21      A. Well, there's not one that says end users

22      disputes, but the fact is it could be under

1 adjustments. It can be under rejects. It can be  
2 under duplicates. I don't know what that end  
3 user may be disputing.

4 Q. But once it's purchased by Sage, Sage is  
5 not able to adjust, deduct, debit or otherwise  
6 attempt to recourse back any uncollectible ABS  
7 charges?

8 A. Sure they are per 2.4.2.1 after all these  
9 adjustments are made. In other words --

10 Q. But none of those adjustments include end  
11 user disputes.

12 MR. ANDERSON: Objection. Asked and answered.  
13 He just answered that question.

14 BY MR. DONOVAN:

15 Q. I'll move on.

16 If you could please turn to your  
17 testimony on Page 22. Starting on Page 22 and  
18 going through 25, you generally discuss the Texas  
19 PC order involving ABS billing and collection.

20 A. Okay.

21 Q. And out of that Texas proceeding, isn't it  
22 true that Sage and SBC have developed a series of

1 business practices that govern how it's currently  
2 handling ABS -- billing and collection for ABS  
3 services?

4 A. That's correct.

5 Q. And I presume you're familiar with the  
6 Texas order under the findings therein?

7 A. Yes.

8 Q. And you're familiar with the business  
9 practices that have been developed out of that  
10 proceeding?

11 A. Yes.

12 Q. You would agree, would you not, that the  
13 Texas Commission found that Sage is not liable --  
14 or should not be liable for SBC's uncollectible  
15 ABS charges passed through to Sage for billing  
16 and collection?

17 A. Yes. And that was the only problem with  
18 that award. That's the only thing that we need  
19 clarification on here.

20 Q. You would agree that SBC and Sage have  
21 entered into the business practices coming out of  
22 the Texas proceeding in the ten states that Sage

1 currently operates in?

2 A. And they work great, except for that last  
3 piece.

4 Q. So the answer is yes?

5 A. Yes.

6 Q. Are you familiar with any state  
7 commissions through arbitration -- well, strike  
8 one second, please.

9 Turn to Page 25 please, on the top of  
10 that page, Lines 563 through, looks like, 568.  
11 You list certain findings of the Texas Commission  
12 with respect to ABS billing and collection.

13 A. That's correct.

14 Q. Have those findings been -- strike that.

15 Has Sage -- the four examples you list  
16 are as requirements on Sage coming out of that  
17 order. Has Sage been billing its end users on  
18 behalf of SBC?

19 A. From my understanding, yes, but just not  
20 collecting.

21 Q. Has Sage implemented track systems as  
22 required under the Texas order?

1           A.   From my understanding, yes.

2           Q.   Has Sage paid the amounts it collects to

3   SBC --

4           A.   What --

5           Q.   -- as required under the Texas order?

6           A.   What little they collect, yes.

7           Q.   Has Sage notified SBC of the accounts in

8   arrears as per the Texas order?

9           A.   From my understanding, yes.

10          Q.   It's your position that the -- or is it

11   your position that the industry standard requires

12   the terminating carrier to pay the ABS charges

13   without recourse?

14          A.   That's the way it always has been done in

15   the industry.  That's what we're proposing with

16   Sage.

17          Q.   What is the industry you're referring to?

18          A.   I'm referring to the local industry.  ILEC

19   to ILEC, LEC to LEC, CLEC -- ILEC to CLEC, the

20   local.

21          Q.   Would that include ILEC to affiliate?

22          MR. ANDERSON:  What kind of affiliate?

1           MR. DONOVAN: Any kind of affiliate. It's the  
2 industry standard.

3 BY MR. DONOVAN:

4           Q. Is there an ILEC to affiliate standard?

5           A. I can't answer the question without  
6 knowing what affiliate, you know.

7           Q. Okay. Let's give you an example.

8                   Is there an industry standard between an  
9 ILEC and ILECs long-distance affiliate --

10          A. Yes.

11          Q. -- for billing and collection.

12          A. As I stated earlier, we have -- there are  
13 contracts between us and AT&T IXC. Those are  
14 pretty much standard agreements.

15          Q. Are there contracts between you and your  
16 long-distance affiliate?

17          A. Yes. From my understanding, yes.

18          Q. How are those contracts developed? Are  
19 they negotiated between the parties?

20          A. I believe so, yes. That's not on my side  
21 of the team, but I believe they are.

22          Q. So, there is agreement between SBC and its



1 long-distance affiliates related to  
2 termination -- related to the billing and  
3 collection services for terminating SBC charges  
4 without recourse?

5 A. What was the last part you said?

6 MR. ANDERSON: Can I have the question read  
7 back please.

8 (Whereupon, the record was  
9 read as requested.)

10 THE WITNESS: Yes.

11 BY MR. DONOVAN:

12 Q. So you're testifying that there is an  
13 industry standard with respect to requiring the  
14 terminating carrier to pay ABS charges, but that  
15 isn't -- seems -- isn't that directly at odds  
16 with the findings of the Texas Commission that  
17 Sage should not be liable for uncollectible ABS  
18 charges?

19 A. It's kind of a vague question. Let me  
20 explain. If you're talking about IXC -- if we're  
21 talking about IXC arrangements, I mean, they have  
22 recourse. Okay?

1                   I'll go ahead and explain this because  
2           it seems like -- if we have an agreement with  
3           AT&T IXC and those agreements say that we can  
4           recourse back uncollectibles back to AT&T, well,  
5           in that industry, it's -- the most that we've  
6           ever recoured back has been on average 10  
7           percent in the industry.

8                   Now, in those contracts, it says that we  
9           can -- we have full recourse rights back to AT&T.  
10          But I -- but there are internal controls with  
11          AT&T that if we recourse back on 100 percent, I  
12          guarantee there's going to be a renegotiation of  
13          the contract.

14                   So -- but in the industry, there's  
15          always been at the most 10 percent. So it's  
16          never been a problem. And so right now, you  
17          know, what we need is some type of cap because it  
18          is a problem in our industry. We can't afford to  
19          have 100 percent recourse back to SBC. That's --

20                  Q.   Isn't that exactly what the Texas  
21          Commission held?

22                  A.   They did not explicitly say, Sage, you're

1 going to recourse back 100 percent. They said,  
2 you will bill your end users for these charges,  
3 which is great for us. They say, you will  
4 implement a tracking system, which is great. You  
5 will be required to pay these charges, which is  
6 great. And you will be required to place blocks  
7 on end users after 60 days. That's all great.

8 So they -- in their award what we saw  
9 was, this is an okay award because once Sage  
10 starts to bill their end users, starts to collect  
11 and starts to use reasonable collection efforts,  
12 we're not going to have a problem any more.

13 But when we continue to still see a  
14 problem of 90 to 100 percent of recouring back,  
15 there is a problem. So that's why we're missing  
16 that last piece.

17 Q. You're not addressing my questions though.  
18 My question was, this supposed industry standard  
19 that you say requires the terminating carrier to  
20 pay ABS charges is directly at odds with what the  
21 Texas Commission held.

22 A. The Texas --

1           Q.   The Texas Commission held that Sage shall  
2   not be liable, isn't that correct, for ABS  
3   charges, for uncollectible ABS charges?

4           A.   It is correct in the fact that they did  
5   not place a cap on how many -- how much of  
6   recourse they can send back to SBC.  But in light  
7   of these four items, the thought was that there  
8   would not be a problem.

9           Q.   So full recourse is okay with conditions?

10          A.   Full recourse is -- full recourse  
11   rights -- in other words, full recourse in an  
12   interconnection agreement is not okay if we  
13   recourse back 100 percent.

14                I mean, in other words, there has to be  
15   a reasonable level of responsibility and that  
16   reasonable level of responsibility in the  
17   industry -- and if you're talking about -- the  
18   IXC world is 10 percent at the most.  What we're  
19   offering Sage is as much as 30 percent.

20          Q.   Page 12 of your testimony, please.  On  
21   lines -- starting on Line 273 and going through  
22   the next page Line 283, in that question and

1       answer you assert, quote, the support of ABS is  
2       more than billing, end quote; is that correct?

3       A.   That's correct.

4       Q.   And you go on to say, It is blocking when  
5       accounts are not paid.

6               Is Sage blocking ABS traffic when SBC  
7       requests Sage to do so?

8       A.   Yes, when SBC asks Sage.

9       Q.   Okay.   And in the next sentence it says,  
10      It is billing and call completion for those that  
11      do not bill and call consciously.

12             Is Sage billing and completing calls for  
13      those that bill and collects consciously?

14      A.   Yes.

15      Q.   Next sentence says, Consumers have the  
16      right to choose local service providers and they  
17      have the right to accept or deny calls.

18             Are you asserting by that statement that  
19      Sage does not provide consciously -- strike that.  
20      Let's move to the next sentence.

21             It says, They have the right to receive  
22      accurate and timely billing for their calls.

1       Who's the "they" you're referring to there?

2           A.   I'm referring to the end users of Sage.

3           Q.   Okay.  And is Sage providing accurate and

4       timely billing for their calls?

5           A.   Well, that we don't know because we're

6       speculating that something is wrong with the fact

7       that if we're getting such a high level of

8       uncollectibles, we're speculating that maybe

9       something is wrong.  Maybe the charges are

10      sporadic on their bills.  We don't know.

11      Q.   Could it be that customers don't want to

12      pay for your charges?

13      A.   Well, I think that's -- just to kind of --

14      Q.   Yes or no, please.

15      A.   Well, I want clarify how this Q and A is

16      done because I don't want to get it out of

17      context.

18                  I'll answer your question.  I'm sorry,

19      what was your question?

20      Q.   My question is, does Sage -- do Sage's end

21      users receive accurate and timely billing for

22      their calls, yes or no?

1           A.   And that, you know, I don't know.  Like I  
2   said, I'm speculating because something --

3           JUDGE GILBERT:  Okay.  You don't know.  Next  
4   question.

5           MR. DONOVAN:  Okay.  Thank you.

6   BY MR. DONOVAN:

7           Q.  On the next page, Page 14, Lines 417  
8   through 430.

9           A.  I'm sorry, say that again.

10          Q.  I'm sorry, let me get a better cite here.  
11   Page 19, Lines 417 through 430.

12                    You assert in that paragraph that the  
13   industry average uncollectible rate is between 15  
14   and 20 percent, and you cite to Ms. Burgess as  
15   the source of that; is that correct?

16          A.  That's correct.

17          Q.  Do you have any independent knowledge to  
18   support that claim?

19          A.  My independent knowledge is based upon,  
20   you know, my research for this issue over the  
21   last two years with all our other ILECs out  
22   there.

1                   And, you know, we've had many conference  
2                   calls and meetings and workshops; and, yes, we've  
3                   discussed this and this has been pretty much the  
4                   industry standard.

5           Q.   But in the testimony, you rely  
6           specifically on Ms. Burgess; correct?

7           A.   Yes.   Because Ms. Burgess handles this on  
8           a daily basis.

9           Q.   Okay.   Similarly, in the next question and  
10           answer you rely specifically on Ms. Burgess to  
11           support the claim that Sage has consistently  
12           recoursed uncollected bad debt back to SBC?

13           A.   Debt is -- I mean, I know the information,  
14           but I leave it to her to speak to it specifically  
15           because she does it on a daily basis.

16           Q.   Page 21, Lines 480 through 484.   Strike  
17           it.

18                   Go to Page 28 please, Line 652.  
19           Actually, starting -- yes, Line 652.   You state  
20           that this is clearly bad public policy in the  
21           telecom industry.

22                   My first question is what are you



1 referring to when you say "this"?

2 A. The fact that Sage wants to be able to  
3 have the option to recourse 100 percent of  
4 charges that their end users say, I don't want to  
5 pay and then send it back to SBC.

6 Q. So in your opinion, it's bad public policy  
7 in the telecom industry to allow for full  
8 recourse?

9 A. I think it's bad public policy to allow  
10 full recourse for Sage.

11 Q. That's not what you say there. You said  
12 this is clearly bad public policy in the telecom  
13 industry.

14 A. Yes, for Sage to have full recourse  
15 rights.

16 Q. That's not what you say there; is it?

17 A. Yes.

18 MR. ANDERSON: Objection. Argumentative.

19 JUDGE GILBERT: What he says is what he says.  
20 Go ahead.

21 BY MR. DONOVAN:

22 Q. So what is your definition of the telecom

1 industry?

2 A. Telecom industry is telephones. It's  
3 companies, ILECs, CLECs, IXC's.

4 Q. Data companies?

5 A. Sure data companies are part of the  
6 telecom industry.

7 Q. So it's your position then that in the  
8 telecom industry it's bad public policy to have  
9 100 percent recourse including -- I guess I'm  
10 confused by the statement. I don't see where  
11 you've narrowed it down to Sage in that  
12 statement.

13 A. Well, what I'm doing is I'm responding in  
14 the question. Ms. Timko is arguing that Sage  
15 should have the unlimited ability to recourse 100  
16 percent of ABS charges.

17 So I'm saying this, allowing them, which  
18 I would perceive of a customer that abuses that  
19 recourse option, is bad public policy for the  
20 telecom industry.

21 Q. Would you agree that SBC's billing and  
22 collection agreements with affiliates allow for

1 full recourse in the telecom industry?

2 MR. ANDERSON: Objection. Vague. Don't know  
3 what affiliates you're talking about.

4 BY MR. DONOVAN:

5 Q. Well, it doesn't matter. You stated the  
6 telecom industry. Any telecom affiliate of SBC.

7 A. Are you talking about IXCs?

8 I stated earlier, in the IXC world with  
9 our agreements, yes, it is correct. In those  
10 agreements, that has always been in those  
11 agreements, there are have been full recourse  
12 rights.

13 But the most that's ever in recourse has  
14 been, the industry average, of 10 percent, not  
15 30, not 40, not 100, not even 20. 10 percent has  
16 been at average. So it's never been a problem.

17 Q. So it is bad public policy for Sage to  
18 have full recourse but not bad public policy for  
19 other carriers to have full recourse for  
20 telecommunications services?

21 MR. ANDERSON: Vague. Are you referring to  
22 other IXC carriers, other local carriers, what

1 kind of carriers?

2 MR. DONOVAN: Whatever else is in this telecom  
3 industry that Mr. Smith has defined.

4 THE WITNESS: It's bad when it is above  
5 industry norms. And industry norms are not 30,  
6 40, 100 percent.

7 BY MR. DONOVAN:

8 Q. You state on Line 657 and 659 that such a  
9 policy will give Sage an unfair competitive  
10 advantage because ILECs and CLECs cannot  
11 unilaterally recover any uncollectible ABS  
12 charges; correct?

13 A. That's correct.

14 Q. If SBC's data affiliate is allowed full  
15 recourse isn't that agreement giving SBC an  
16 unfair advantage the same way giving it to Sage  
17 would be?

18 MR. ANDERSON: I'm sorry, you said if the data  
19 CLEC has full recourse?

20 MR. DONOVAN: Correct.

21 MR. ANDERSON: Is that the question? In the  
22 context, that question make no sense because the

1       ADS of that affiliate is not having customers  
2       which accept or authorize collect calls.

3       MR. DONOVAN:   But that's -- I'm not narrowing  
4       it down to just collect calls.  I'm talking about  
5       as a general matter of policy, is there an unfair  
6       competitive advantage to SBC for allowing its  
7       affiliate to have recourse -- to recourse that --

8       MR. ANDERSON:   And there's no foundation in  
9       the record that the affiliate had full recourse  
10      back to SBC.

11      MR. DONOVAN:   Well, I think that gets back to  
12      the issue of we had to adjust the schedule to  
13      keep Mr.   -- to keep Mr. Smith on his plane  
14      today.  The foundation would have been laid had  
15      Ms. Timko been able to provide her testimony,  
16      which would include SBC's affiliate contract  
17      allowing full recourse.

18      MR. ANDERSON:   But that's SBC's recourse to  
19      the affiliate.  That's not -- I don't know.  Go  
20      on.

21      BY MR. DONOVAN:

22      Q.   Can you answer my question?

1                   Is there an unfair competitive advantage  
2   on behalf of SBC for allowing its affiliate to  
3   have full recourse while it will not allow Sage  
4   to have full recourse?

5       A.   Our affiliate recoured above industry  
6   norms, yes, that will be unfair advantage; but  
7   that's not the case.  They practice just like the  
8   industry has always practiced.  It's not an  
9   issue.

10       Q.   Page 33, please.  Line 772 -- well,  
11   starting on Page 771.  You make reference to the  
12   40 cent per bill message, an amount that is at  
13   least 20 times higher than the industry standard.

14       A.   Yes, I see that.

15       Q.   And by industry standard, you're referring  
16   to the 5 cent billing and collection fee?

17       A.   Yes, that's correct.

18       Q.   Perhaps you can walk me through the math  
19   here.  I don't understand how --

20       A.   Did I do the math wrong?

21       JUDGE GILBERT:  Well, it would be eight times  
22   higher than a 5 cent fee.

1           THE WITNESS:   Yeah, maybe I did the math  
2   wrong.

3           MR. DONOVAN:   I just wanted to clarify that  
4   one point.   Thank you.

5           MR. DONOVAN:   Your Honor, I believe I'm done  
6   with my direct -- with my cross.

7           JUDGE GILBERT:  Mr. Lannon, how about you?  
8   What do you have?

9           MR. LANNON:    I just have a few questions.

10          JUDGE GILBERT:  Oh, I've heard that one  
11   before.

12          MR. LANNON:    I'm going to try to stick to  
13   that.

14                          CROSS-EXAMINATION

15                          BY

16                          MR. LANNON:

17          Q.   Good afternoon, Mr. Smith.

18          A.   Good afternoon.

19          Q.   I'm going to try to rush through this.  I  
20   know you've got a deadline here.

21                          Do you know what SBC charges Sage to  
22   place a block on its UNE-P customers?

1           A.   We don't charge anything to Sage for the  
2   block.

3           Q.   Okay.  Could you turn to your rebuttal  
4   testimony, Page 3.  I have a couple questions  
5   regarding the intervening law provision, SBC  
6   Issue 1.

7                   It's my understanding that that issue is  
8   still an open issue in this arbitration; is that  
9   your understanding?

10          A.   Yes, sir.

11          Q.   Thank you.

12                   On Page 3 of your rebuttal, I think it's  
13   Q and A 7, you state that SBC Illinois' proposed  
14   new intervening law language is consistent with  
15   applicable FCC rules; is that right?

16          A.   That's correct.

17          Q.   Do you know whether SBC Illinois' proposed  
18   new intervening law language is consistent with  
19   applicable Illinois law?

20          A.   My understanding is it is.

21          Q.   Are you familiar with Illinois specific  
22   requirements regarding ILEC provisioning of UNEs



1 and UNE combinations?

2 A. Vaguely.

3 Q. Okay. Under SBC's proposed intervening  
4 law language then, which by the way doesn't  
5 appear to reference any Illinois law at all, what  
6 UNEs or UNE combinations does SBC Illinois no  
7 longer believe it is required to provide  
8 requesting CLECs?

9 A. Now, you're talking from the Verizon  
10 decision or reference to the Verizon decision?

11 Q. No, not really. I'm talking about federal  
12 law versus Illinois law.

13 The language in your intervening law  
14 provision indicates that SBC believes it's no  
15 longer necessary to provide certain UNEs or UNE  
16 combinations but it only references federal law?

17 MR. ANDERSON: It might help if we could  
18 respond to a specific line.

19 MR. LANNON: Okay. Hang on just a second.

20 THE WITNESS: I think I know the section  
21 you're talking about.

22 BY MR. LANNON:

1           Q.   It would be the first SBC Illinois in  
2   bold, what follows from that.

3           JUDGE GILBERT:   What line are you on?

4           MR. LANNON:   It's -- I'm in Attachment 1, the  
5   first page of it.   It's about a third of the way  
6   down.

7           JUDGE GILBERT:   Attachment 1 to the --

8           MR. LANNON:   Oh, I'm sorry.   To the reply to  
9   the petition.

10          MR. ANDERSON:   It's the word, I think,  
11   notwithstanding is where he's looking at.

12          MR. LANNON:   I can read it.

13          JUDGE GILBERT:   I see it.   Don't read it into  
14   the record because it's already in the record.  
15   Just make sure he knows what you're talking  
16   about.

17          THE WITNESS:   Right.   And my understanding of  
18   this is the fact that our new intervening law  
19   language would -- we would reserve the right, you  
20   know, based upon these decisions or any other  
21   subsequent decision that we might want to invoke  
22   to take -- you know, to not create new UNEs or --

1 I mean, to do new UNE combinations.

2 I don't know the specific UNE  
3 combinations that are required by the Illinois  
4 law that we would willing -- that we're either  
5 looking at to possibly take down.

6 From my understanding, this new  
7 intervening law language is just to reserve our  
8 rights. But I don't know the specific UNE  
9 combinations because I do know Illinois does have  
10 specific UNE combinations that are required, and  
11 I'm not sure which ones are actually being looked  
12 at or if there are any being looked at to be  
13 quite honest.

14 MR. LANNON: Thank you. That's all I have.

15 JUDGE GILBERT: Okay. I have some questions.  
16 I'm just going to take a very brief break.

17 (Whereupon, a discussion  
18 was had off the record.)

19 JUDGE GILBERT: Back on the record.

20 Mr. Smith, I'm sure you will do your  
21 best to please answer the question I ask.

22

1 FURTHER EXAMINATION

2 BY

3 JUDGE GILBERT:

4 Q. If you look at Page 12, the sentence which  
5 includes the matter on Line 256 where it says,  
6 SBC is expected to pay the out of region carry  
7 100 percent of attendant charges. And there's no  
8 offset there for uncollectibles whatsoever.

9 A. Yes, sir.

10 Q. That's correct, no offset is permitted at  
11 all?

12 A. Can I just read this?

13 Q. Sure. Of course.

14 A. Yes. This is correct in the fact that we  
15 pay the Verizons and Bell Souths of the world,  
16 yes, 100 percent.

17 Q. Of their billed amount?

18 A. Yes. Of that tariff rated charge exactly.

19 Q. All right. And to use the terminology  
20 that's been used throughout the case, you would  
21 eat any uncollectible yourself, your company?

22 A. That's right. There's no recourse rights.

1           Q.   Okay.   Perhaps I may have had a  
2           fundamental misunderstanding here.   If you take a  
3           look at Page 15, the sentence that begins over at  
4           the right-hand margin on Line 343 and continues  
5           to 346 and refers to language, intended to  
6           reconcile only intraLATA toll and/or toll ABS  
7           calls.

8                     Is that correct?   Is local not included?

9           MR. ANDERSON:   Are you referring to the  
10          intraLATA local and/or toll?

11          JUDGE GILBERT:   Yes.

12          THE WITNESS:   It's local toll.   IntraLATA  
13          toll -- intraLATA local and/or local toll ABS.   I  
14          mean, it's just local.   My sentence there was  
15          just to convey -- we're not talking about  
16          interexchange.

17          BY JUDGE GILBERT:

18          Q.   So intraLATA then becomes the modifier of  
19          both local and toll?

20          A.   That's correct.

21          Q.   Okay.   Thank you.

22                     All right.   On Page 17, top line, which

1 is Line 370 referring to the toll billing  
2 exception, or TBE, can a single line be blocked  
3 through TBE or would you have to block, as it  
4 says there, all of a given CLEC's UNE-P end  
5 users?

6 A. Sure. Single lines can be blocked. A lot  
7 of carriers do that when they have bad customers  
8 that don't pay. But what happens on the  
9 Option 1 -- this is where I was just trying to  
10 clarify that if they choose -- see, we have some  
11 CLECs that want to get out of the ABS business,  
12 period. And as soon as they get the line  
13 provision to them, they just want it blocked and  
14 they only offer their customers, like, a prepaid  
15 service or something like that.

16 But, yes, you can do it on an individual  
17 basis. Carriers could do that.

18 Q. Okay. So it's any or all?

19 A. Yes.

20 Q. All right. Going three lines down there  
21 to 373 with respect to selectively blocked calls,  
22 which would be blocking outgoing calls from

1       certain facilities and I guess primarily inmate  
2       facilities, are you blocking all outbound calls  
3       from those facilities or outbound calls to  
4       certain recipients?

5           A.   The way the selective blocking works, when  
6       we discovered there was a problem all we really  
7       had was TBE.  And so we found out that a lot of  
8       the collect calls from prisons were causing a lot  
9       of problems.

10                So we were able to develop a system  
11       where SBC has a contract with those prison  
12       facilities, those pay phones in prison  
13       facilities.  And where the equipment was, was  
14       there because sometimes we have -- those pay  
15       phones don't necessary have the software and  
16       equipment.  But where it was there we developed a  
17       system where all the outbound calls could be  
18       blocked.

19                So it was just an additional precaution  
20       that we -- you know, we gave -- we developed and  
21       we allowed the CLECs to be able to use for free  
22       to help alleviate this problem.

1           Q.   Okay.  I think I understood that, but I  
2           think I'm asking a different question.  But I  
3           know I am.

4           A.   I'm sorry.

5           Q.   Would an inmate at a facility using the  
6           selective block be unable to place a collect call  
7           to anyone or would they be unable to place any  
8           call to anyone?  What would they be unable to --

9           A.   They would be able (sic) to place the ABS  
10          call, any ABS call to anyone from that.

11          Q.   Unable to?

12          A.   Unable.  From that prison pay phone, yes,  
13          that's correct.

14          Q.   Okay.  So if a given prison utilized  
15          selective blocking, it would mean then that no  
16          inmate could make a call, an ABS call, to any  
17          recipient?

18          A.   Yes.  But -- just also, they can because  
19          what happens is when we do have those prisons  
20          blocked, our affiliate has another, you know --  
21          SBC public telecommunications has the pay phones.  
22          They're really not an affiliate.



1           They offer prepaid service. They don't,  
2   but they have another company offering prepaid  
3   service to those inmates in those prison to be  
4   able to do that. But, yes, they can't do it  
5   unless they have that prepaid service.

6       Q. Okay. All right. Look at Page 54- -- I'm  
7   sorry, Page 24, Line 547. The sentence beginning  
8   on that line and running to Line 549. And in  
9   particular where you say, SBC Illinois is pleased  
10   with priors in cooperation made in developing  
11   business practices with Sage regarding ABS.

12           Given that we have this proceeding, I  
13   don't see the pleasure. In what way is SBC  
14   pleased?

15       A. Let me explain that. We were very pleased  
16   by -- after the Texas Commission came out with  
17   those four items that said what Sage had to do,  
18   bill and collect and place blocking on bad  
19   customers and so forth.

20           We were very happy with the business  
21   practices that came out of that because we were  
22   able to develop practices with Sage to be able to

1 bill these customers and so forth.

2 But the reason why we're here is because  
3 even with that cooperation and we worked together  
4 in those practices, we are -- because of the fact  
5 that there is no capital uncollectibles, nothing  
6 is getting -- in other words, we may -- they may  
7 do billing, but somehow nothing is ever getting  
8 paid because we're not getting, you know, hardly  
9 anything back. That's the problem.

10 Q. Okay. Since you said SBC Illinois rather  
11 than SBC more broadly, it confused me a bit  
12 because my understanding was that Sage is not  
13 actually doing business yet with you in Illinois.

14 A. Yes, sir. That's correct. And this is  
15 experience we've had in the other states with  
16 Sage, that Sage is offering.

17 Q. If you look at Page 25, in particular,  
18 Line 582, you refer to 35 percent of all SBC's  
19 rated messages and you make a distinction between  
20 that and 35 percent of unbillables and rejects.

21 I understand the distinction you're  
22 making. What's not clear is whether all SBC's

1       rated messages, in fact, includes unbillables and  
2       rejects among all.

3           A.   When we send the rate the message to  
4       Sage -- let me read this a second.   One second.

5           Q.   Sure.

6           A.   Right.   The 35 percent would be for Sage  
7       to be able to -- in other words, if they get  
8       these rated messages on a daily basis, they would  
9       send us back any unbillables, any rejects.

10                  But the amount, the net amount that  
11       really needs to be owed -- from that net amount,  
12       they would not have to pay that 35 percent.   They  
13       would be able to recourse that for bad debt  
14       specifically.   Just for bad debt.

15           Q.   Okay.   But just to -- I'm going to --

16           A.   Maybe I'm not being clear.

17           Q.   Well, maybe my question isn't clear.   I  
18       just want to make sure I understand you.

19                  All is obviously referring to 100  
20       percent of something.   All right.   Would that 100  
21       percent include unbillables and rejects as well  
22       as all other calls?

1           A.   Yes.  On an all basis, yes, it's going to  
2   include it.

3           Q.   Page 33, final sentence starting at Line  
4   765, final sentence in the first paragraph.  If  
5   you want to just take a look at that for a  
6   moment.

7           A.   Yes, sir.

8           Q.   My understanding is that a customer pretty  
9   much anyplace could place a call through pretty  
10   much any IXC they wanted to simply by using their  
11   access code; wouldn't that be correct?

12          A.   From my understanding, yes.

13          Q.   So wouldn't that mean that within the  
14   industry companies are constantly called upon to  
15   deal with ABS calls from virtually any other  
16   carrier?

17          A.   Yes.  In a general sense, yes, they are.

18          Q.   And so they would have to create some kind  
19   of mechanism by which they would recover their  
20   charges for those calls; correct?

21          A.   I don't know.  I hope so.

22          Q.   I mean -- well, let me not hide my cards

1       here.  As I understand the point you're making,  
2       it's that if SBC has sent an ABS call to a Sage  
3       customer for SBC to then bill directly to the  
4       Sage customer would require, what you believe,  
5       would be a burdensome amount of what you call  
6       infrastructure here --

7           A.  Yes, sir.

8           Q.  -- in order to do that.

9                   And I guess what struck me is that this  
10       must have -- this must go on all the time within  
11       the industry -- and by "the industry," I mean  
12       what you said when you said telephones, you know,  
13       everything; that there must -- there must, on a  
14       pretty constant basis, be the need to find a way  
15       to cover those monies.

16                   And so why would you -- why would SBC  
17       have to do in this case be any more difficult  
18       than what anyone else does?

19           A.  Well, because, number one, this is not our  
20       end user.  So this end user with Sage did not  
21       say -- did not choose SBC to be their provider.  
22       They chose Sage to be their local provider.

1           So we don't know who that Sage end user  
2    is. In other words, whenever there's a -- when  
3    the DUF goes out to Sage to bill for that call,  
4    we don't have the billing name account  
5    information for a non-end user. We have that  
6    information for our end users, but not for  
7    non-end users.

8           And our concern comes on two fronts.  
9    Number one, on the infrastructure side, of  
10   course, the billing process to be able to build  
11   infrastructure to say, okay, we got to get -- it  
12   will be a billing process for Sage, too, because  
13   they would have to build infrastructures that  
14   sends the BNA on a timely basis and so forth.

15           And then also just from customer care,  
16   because now you have a situation where you would  
17   have a Sage end user calling SBC, and we would  
18   have to set up a separate 800, separate  
19   representatives because those are not our end  
20   users.

21           We don't know who -- we don't know what  
22   kind of services they buy. We don't know, you

1 know, what they bought from Sage and how they're  
2 handled, who they are.

3           It's just a lot of infrastructure calls  
4 we would see, and I think overall it's going to  
5 be very burdensome to an end user to get all  
6 these different bills from different carriers and  
7 especially maybe the carrier they fired, which  
8 will probably be us, and they're going to get a  
9 bill from us and they're not going to -- and we  
10 have no recourse.

11           In other words, if they decide not to  
12 pay that, what can we do? Nothing. We can't cut  
13 them off for local service. They're not our end  
14 user. It's Sage's end user.

15       MR. KELLY: Your Honor, I'd like to object for  
16 lack of foundation of the comment that the end  
17 user on that operator-assisted call is Sage's end  
18 user. That's just not the fact. I'll just leave  
19 it at that.

20       JUDGE GILBERT: I know that you guys dispute  
21 who is the end user as part of your dispute about  
22 who should be responsible for the call. And

1       we'll just leave it there, that there is a  
2       dispute.

3       BY MR. GILBERT:

4           Q.   Let's look at it this way:  Let's say a  
5       caller from a prison -- because that would be  
6       probably MCI service facility, since you seem to  
7       specialize in that.

8                   Just assume for the moment that SBC  
9       isn't even involved in this.  It's ILEC X, forget  
10      SBC.  A customer makes that call.  Goes to CLEC  
11      Y.  ILEC X has to figure out some way to get  
12      their money back from the end user or from CLEC  
13      Y, which is the equivalent of your problem here,  
14      how to get your money back.

15                  I'm assuming that MCI either through a  
16      contract with somebody or through an  
17      infrastructure by which they bill directly to the  
18      end user has some means of recovering their  
19      money.

20           A.   Okay.

21           Q.   And I guess everybody is doing it.  I  
22      mean, anyone can call anyone.  How does MCI



1       create the structure, for example, by which they  
2       can collect directly from the end user; but for  
3       you folks, you're asserting that infrastructure  
4       would be too difficult.

5               And just assume that they do that. Just  
6       assume that MCI does that, and I realize that's  
7       not a fact in evidence. But let's just assume  
8       that they do. So we'll call it a hypothetical.

9       A. Well, like you said, I would say that  
10      probably if it was MCI the interexchange carrier  
11      or whatever, they can enter into an agreement  
12      with Sage, which I think Sage has said that they  
13      do have agreements where they provide BNA and so  
14      forth like that. But it's just not standard on  
15      the -- you know, it's not industry practice with  
16      ILECs or on the local side to bill the end user  
17      that's not our end user.

18             And to be quite honest with you, to let  
19      you know, June has been -- she may be the best  
20      person to ask this question later on because  
21      she's very highly involved with the costs that go  
22      into a direct bill option because I know her team

1       is -- they've actually looked at that at one time  
2       or another.

3               You know, just because we've had some,  
4       you know, situations out there where that was the  
5       case; but it was just so -- it wasn't -- we found  
6       out not only would it just confuse the consumer,  
7       it's not industry standard and it's very  
8       cost-prohibitive. But I don't know -- I mean, I  
9       can't --

10       Q. That's fine.

11       A. I mean, the way we see it on the local  
12       side is that the cost causer in this case, we  
13       believe, is the CLEC because they have the  
14       ability to be able to -- and I guess that's where  
15       we get back to our inherent problem here.

16               We believe that that -- the issue of ABS  
17       is inherent to the function of the line. And so  
18       we believe the CLEC has the ability to say, it  
19       turns off; it turns on. You know, just like they  
20       blocked some of their end users 900, 976 number  
21       calls.

22               In other words, they are able to control

1       that, you know, what kind of options they're able  
2       to offer their end users. We don't see this as  
3       any different.

4               I guess, and talking in general, ABS is  
5       not like DSL. You know, we don't -- there's not  
6       a -- we don't have a subsidiary of ABS and say,  
7       we're going to call this customer and develop a  
8       relationship with them and bill them every month  
9       for those charges.

10              I don't know if that answers your  
11       question. I'm just trying to be -- probably off  
12       the wall.

13       Q. No, that is responsive to the question.  
14       Although, included in that, Ms. Burgess, is  
15       what's called a hand-off. You know, so I can  
16       take it up, I guess, further with you.

17              And I will say because you mention  
18       customer confusion, Mr. Smith, that the same  
19       principle would apply it seems to me, that the  
20       customer is just as likely to get a separate  
21       bill. By "separate," I mean not from their ILEC  
22       or CLEC.

1           A.   They may get it from the IXC, which they  
2   have direct relationship.

3           Q.   Yeah.  Or they may not because it could  
4   come from virtually any IXC from virtually  
5   anyplace and they've accepted that call, and it  
6   creates some of the same issues is all I'm  
7   saying, which doesn't mean that your position  
8   here is wrong.  I'm just saying some of the same  
9   tensions.

10                  Anyway.  Almost done.

11           JUDGE GILBERT:  Okay.  I'm done.

12           MR. KELLY:  Your Honor, I have two questions,  
13   literally, about toll blocking exception.  I can  
14   ask Ms. Burgess or since he's touched on it in  
15   your examination, I can ask him.  It doesn't  
16   matter to me.  I think both are qualified to  
17   answer it.

18           JUDGE GILBERT:  Okay.  Let's see.  Let's see.

19                  Mr. Anderson, with respect to redirect,  
20   if you redirect him, he's going to have to stay  
21   for recross; so you want to consider that as you  
22   think about what to do.

1                   You want to think about what to do for a  
2     while, or do you know?

3           MR. ANDERSON: I think I have an idea. We  
4     talked a little bit about it. If I could have  
5     just a couple minutes. We don't even all have to  
6     leave the room.

7           JUDGE GILBERT: And with respect to you --

8           MR. KELLY: I'll wait till Ms. Burgess. I  
9     think he is pressed for time.

10          JUDGE GILBERT: Yeah, because I'm thinking if  
11     he's not going to do redirect or very, very brief  
12     redirect -- no.

13          MR. KELLY: I'll just wait.

14                                 (Whereupon, a discussion  
15                                 was had off the record.)

16          JUDGE GILBERT: Back on the record.

17                 Mr. Anderson informs me that he has some  
18     redirect.

19                         REDIRECT EXAMINATION

20                         BY

21                         MR. ANDERSON:

22                 Q. Mr. Smith, you were asked some questions

1       this morning regarding industry standards, and I  
2       believe you discussed industry standards as it  
3       relates to the billing and collection  
4       arrangements between ILECs and interexchange  
5       carriers and compared those or contrasted those,  
6       the industry standards, as they relate to  
7       arrangements for the billing and collection of  
8       ABS charges between local exchange carriers. Do  
9       you recall those questions and answers?

10       A.   Yes I do.

11       Q.   And would you explain in your view why  
12       there would be a difference in the industry  
13       standard with respect to, for example, recourse  
14       between those situations?

15       A.   Right. In the ILECs situation, because  
16       what we're talking about today, you know, the --  
17       we're talking about specifically the message  
18       exchange of ABS records. That's it. It's  
19       limited to ABS records.

20               And the difference with the contracts in  
21       the IXC world is those contracts don't just  
22       include the small ABS. Those contracts include

1 all types of records. You know, there's tons of  
2 different types of records that are exchanged  
3 with IXCs.

4 Also, it's -- in the IXC world, it's a  
5 one-way relationship. It's not a -- there's not  
6 exchange records between two parties. There's no  
7 reciprocal type arrangements. It's just one way.

8 We're not sending things back to our  
9 IXC. And, third of all, of course, there is a  
10 direct relationship, which we touched on a little  
11 bit with the IXC, with the end user has that  
12 direct relationship with the end user.

13 We don't have a -- this end user Sage  
14 has not directly chosen us as to be the provider.  
15 So there's just a little bit more clarification  
16 on the differences.

17 MR. KELLY: Again, object to a lack of  
18 foundation that the collect receiver of the call  
19 lacks a relationship.

20 JUDGE GILBERT: Okay.

21 BY MR. ANDERSON:

22 Q. You were also asked a question which

1 suggested there might be a situation where an SBC  
2 affiliate recourses uncollectible ABS charges  
3 back to SBC Illinois or an SBC -- another SBC  
4 ILEC. Do you recall those questions?

5 A. Yes, that's correct.

6 Q. Can you think of any scenario in which  
7 that would occur?

8 A. No.

9 Q. So would an IXC -- if it were an IXC  
10 affiliate, would an IXC affiliate ever be  
11 recouring uncollectible ABS charges back to SBC?

12 A. No.

13 Q. And why is that?

14 A. Because in those affiliated agreements,  
15 it's going to -- it's a one-way type agreement.  
16 I mean, if there's not -- they're not going to  
17 recourse back to us. It's going to actually be  
18 recoursed back to them.

19 Q. And is that because the IXC is not  
20 accepting collect calls from the LEC?

21 A. That's correct.

22 Q. Does SBC have a billing and collection



1       arrangement with a CLEC affiliate for ABS  
2       charges?

3       A.   Yes, we do.

4       Q.   Okay.  And in that arrangement, does the  
5       CLEC affiliate have any recourse rights back to  
6       SBC?

7       A.   No, they have no recourse rights.

8       Q.   Thank you.

9               The judge asked you some questions about  
10      selective blocking and in particular the scenario  
11      in which all -- or calls -- a prison will have  
12      selective blocking of calls from the inmates, ABS  
13      calls from the inmates.

14             And I believe the question was whether  
15      this would result in a blocking or preventing  
16      inmates from making calls to any customers, to  
17      any -- any calls.  Is that your recollection of  
18      the question?

19      A.   Yes.

20      Q.   Would you like to clarify your answer to  
21      that question?

22      A.   Yes, I would.  That particular inmate

1       would not be able to make a collect call out to  
2       a -- for instance, Sage, if Sage has implemented  
3       selective blocking.

4               In other words, if they want to call  
5       AT&T, if AT&T hasn't implemented selective  
6       blocking, they can call an AT&T customer. It  
7       would be just for those customers that have the  
8       carrier that has implemented selective blocking.

9       JUDGE GILBERT: Will that be your last  
10      question?

11      MR. ANDERSON: I have one more.

12      JUDGE GILBERT: Okay. Go ahead.

13  
14      BY MR. ANDERSON:

15      Q. Finally, the judge asked you questions  
16      about -- and I'll refer you to Page 25. This was  
17      the question about the cap on uncollectibles, in  
18      particular the 35 percent cap and to what amount  
19      that 35 percent cap is applied. Do you recall  
20      those questions?

21      A. Yes, I do.

22      Q. Great. Is -- under the Option 2 proposal,

1       would you explain again or clarify your answer as  
2       to what the 35 percent cap is applied to.

3       A.   Yes.   Basically what happens is, the 35  
4       percent applies to the gross.   In other words, we  
5       send them a gross amount of ABS traffic from that  
6       amount, it actually works a little bit when  
7       they're able to take off of that amount the  
8       rejects, the unbillables, and then get down to a  
9       certain amount.   And then from that they're able  
10      to take the 35 percent off.

11      Q.   So the 35 percent applies to the net in  
12      your scenario?

13      A.   That's correct.

14      JUDGE GILBERT:   And that would be different  
15      from what I thought I understood.

16      MR. ANDERSON:   Right.   That's why we thought  
17      that needed clarification.

18               Those are all the questions I have.

19      JUDGE GILBERT:   Okay.   For Sage and staff,  
20      wait just a moment because I want to clarify  
21      something here and you will have your  
22      opportunity.

1 FURTHER EXAMINATION

2 BY

3 JUDGE GILBERT:

4 Q. Regarding selective blocking, I guess I  
5 haven't -- perhaps I misunderstood it correctly  
6 to this point.

7 I thought that selective blocking was  
8 something that would be imposed, as you discuss  
9 on top of Page 17, by SBC at an originating  
10 facility and not by Sage. So I'm confused by  
11 your most recent answer. Maybe you can clarify  
12 that.

13 A. That's correct. Basically what happens  
14 is, at the request of Sage or any other carrier,  
15 if they would like to implement selective  
16 blocking at prison facilities we do that at their  
17 request on their OCN level.

18 So if Sage came in to say, hey, I'm  
19 going to implement selective blocking because a  
20 lot of these charges are from prison facilities,  
21 we would do that at their request where we're  
22 able to. And then that customer -- that inmate

1 would not be able to make a call to a Sage end  
2 user any longer.

3 Q. They would request it. You would do it?

4 A. Yes, sir.

5 Q. And when you did it, it would only  
6 selectively block calls from that facility to a  
7 particular CLEC, in this case Sage?

8 A. That's correct.

9 JUDGE GILBERT: Okay. Then I understand.

10 All right. Sure. Recross.

11 RECROSS-EXAMINATION

12 BY

13 MR. KELLY:

14 Q. That is distinguished from the Option 1  
15 toll blocking exception or toll billing exception  
16 that's contained in the Option 1; correct?

17 A. Yes, that's correct.

18 Q. And in that situation, in Texas, for  
19 example, for example, if there is too high of an  
20 uncollectible rate for SBC's incollect calls that  
21 Sage direct bills under the regulations in Texas,  
22 SBC can ask that that toll blocking or toll

1       billing exception be put on the line; right?

2           A.   Yes, that's correct.

3           Q.   And in that situation, calls made inbound  
4       to the Sage customer from an SBC inmate facility  
5       can't be completed; correct?

6           A.   That's correct.   Selective blocking is  
7       kind of the -- it was the small fix.   Toll bill  
8       exception blocking is the fix.

9           Q.   Okay.   And when toll billing exception --  
10      or total blocking is implemented, in that  
11      situation, calls inbound to the Sage customer on  
12      1-800-COLLECT or 1-800-CALLATT can't be completed  
13      to that Sage customer as well; isn't this  
14      correct?

15          A.   It blocks all ABS calls.

16          Q.   You talked about the difference between  
17      the ILEC and CLEC BNC arrangements and I think  
18      you described on the lack of -- the fact that  
19      there's a lack of parity in the number of records  
20      being exchanged between the IXC and the ILEC on a  
21      back-and-forth basis is a factor as to why you  
22      have recourse abilities in your IXC agreements;

1       isn't that accurate?

2           A.   Not the -- a couple of things.   Not the  
3       number of records.

4           Q.   The value?

5           A.   No, no.   There's the number and then  
6       there's the type of records.   I mean, there's  
7       more than just ABS that we -- that are exchanged  
8       with an IXC provider.   And those -- I mean, those  
9       are -- that's only, I'm sure, a small factor in  
10      why those things are different.

11          Q.   But in the BNC arrangement, an IXC  
12      recourse -- or, you know, sends their  
13      long-distance or their ABS traffic through that  
14      local exchange carrier BNC arrangement; correct?

15          A.   That's correct.

16          Q.   And reason -- I think you indicated that  
17      the reason that there is not this other  
18      arrangement that you're proposing is because a  
19      lack of exchange.   Aren't the records going from  
20      SBC back to the IXC; correct?

21          A.   That's correct.

22          MR. KELLY:   No further questions.

1 JUDGE GILBERT: Mr. Lannon?

2 MR. LANNON: Staff has nothing.

3 JUDGE GILBERT: Okay. We are completed then

4 with Mr. Smith. Thank you, sir.

5 (Whereupon, a discussion

6 was had off the record.)

7 JUDGE GILBERT: Let's go back on the record.

8 The next order of business would be to

9 go to the direct case of Sage Telecom.

10 (Witness sworn.)

11 MR. KELLY: Your Honor, we'll sponsoring the

12 testimony from Ms. Timko for testimony.

13 STEPHANIE G. TIMKO,

14 having been called as a witness herein, after

15 having been first duly sworn, was examined and

16 testified as follows:

17 DIRECT EXAMINATION

18 BY

19 MR. KELLY:

20 Q. Ms. Timko, could you please state and

21 spell your name for the record.

22 A. Stephanie G. Timko, T-i-m, like Mary, k-o.



1           Q.   And let me show you what's been marked by  
2           the court reporter as Petitioner's Exhibit 1.0,  
3           which is your direct testimony.  Do you have that  
4           in front of you?

5           A.   Yes, I do.

6           Q.   Was this testimony prepared under your  
7           direction and control?

8           A.   Yes.

9           Q.   If I were to ask you those questions,  
10          would you give the answers that are set forth in  
11          that testimony?

12          A.   Yes, I would.

13          Q.   Also attached to that testimony is SGT,  
14          dash, 1, which is a copy of your resume; and SGT,  
15          dash, 2, which is an exhibit; and SGT, dash, 3,  
16          which is an additional exhibit.

17                 Do you see that?

18          A.   Yes, I do.

19          Q.   Are those component parts of your  
20          testimony?

21          A.   Yes, they are.

22          MR. KELLY:  Your Honor, with that, I would

1 move for the admission of Petitioner Exhibit 1.0  
2 with attachments SGT-1, 2, 3.

3 JUDGE GILBERT: Is there any objection?

4 MR. ANDERSON: We do have objections to  
5 portions of the testimony.

6 JUDGE GILBERT: Of the direct?

7 MR. ANDERSON: I apologize, no, we no  
8 objection to the direct testimony.

9 MR. KELLY: I move that because I  
10 anticipated --

11 MR. ANDERSON: Yes. I'm sorry, I wasn't  
12 following. Thank you.

13 MR. LANNON: Staff has no objections either.

14 JUDGE GILBERT: Sage Exhibit 1.0 is exhibited  
15 including attachments.

16 (Whereupon, Petitioner's  
17 Exhibit No. 1.0 was admitted  
18 into evidence.)

19 BY MR. KELLY:

20 Q. Ms. Timko, let me also show you what the  
21 court reporter has marked as Exhibit No. 2.0,  
22 which is the rebuttal testimony of Stephanie

1 Timko. Do you see that?

2 A. Yes.

3 Q. And was this testimony prepared under your  
4 direction and control?

5 A. Yes, it was.

6 Q. Okay. Attached to your testimony is  
7 Exhibit A, which is an agreement for billing and  
8 collection services; Exhibit B, which is a  
9 billing name and address agreement; and  
10 Exhibit C, which is ascribed as the NECA,  
11 N-E-C-A, agreement.

12 Are those exhibits component parts of  
13 your rebuttal testimony?

14 A. Yes, they are.

15 Q. If I were to ask the questions that are  
16 contain in your testimony, subject to the  
17 corrections we're about to give, would you give  
18 those answers?

19 A. Subject to the corrections, yes.

20 MR. KELLY: Just so the record is clear, there  
21 are have been some small minor edits,  
22 typographical type clerical mistakes in the

1       rebuttal testimony. We've marked those in the  
2       versions that's going to be filed with the  
3       clerk's office as well copies that have  
4       distributed to the parties.

5               Your Honor, I could go through those  
6       edits if you'd like or we could just move along.

7       JUDGE GILBERT: Okay. Just for housekeeping,  
8       the three items A, B, and C that you referred to  
9       as exhibits in connection with Sage Exhibit 2.0,  
10      we will refer to as attachments rather than  
11      exhibits?

12      MR. KELLY: Yes.

13      JUDGE GILBERT: Now, there's both the public  
14      and --

15      MR. KELLY: Confidential versions of the  
16      testimony itself.

17      JUDGE GILBERT: Okay. The public version then  
18      is marked appropriately. We'll refer to the  
19      confidential version as Exhibit 2.0 P.

20      MR. KELLY: Okay.

21      JUDGE GILBERT: So that we can distinguish it  
22      from the public version.

1 MR. KELLY: So the P stands for proprietary?

2 JUDGE GILBERT: Yes, it does.

3 MR. KELLY: And, your Honor, let me just make  
4 clear that the direct testimony Exhibit 1.0 was  
5 filed with the clerk's office. We have not  
6 provided additional copies today. Exhibit 2.0 P  
7 and 2.0, the public version, we have provided  
8 copies today that was not prefiled with the  
9 clerk's office. Although, it was served, albeit  
10 late.

11 And with that, your Honor, we would move  
12 for the admission of Exhibit 2.0 to 2.0 P, and  
13 the attachments -- I'm sorry -- yeah, attachments  
14 A, B, and C to that testimony.

15 JUDGE GILBERT: Okay. Objections?

16 MR. ANDERSON: We have some objections.

17 JUDGE GILBERT: All right.

18 MR. ANDERSON: There are several -- as I  
19 indicated earlier, several portions of  
20 Ms. Timko's rebuttal testimony which I believe  
21 are not proper rebuttal to staff but are more in  
22 the nature of additional direct testimony in

1 support of its position.

2 And under the schedule in this  
3 proceeding, that testimony was to have been filed  
4 on October 1st; and I will just briefly go  
5 through and identify those portions that are  
6 subject to the motion on Page 3 of Lines 11  
7 through 20; Page 7, Lines 1 through 9; Page 8,  
8 Lines 1 through 20.

9 In addition to the more general  
10 objection that I just made, I would note that the  
11 issue of the adequacy of the .03 for record to  
12 bill and collect SBC collection calls was  
13 addressed by Ms. Timko in her direct testimony.  
14 However, the additional support for that position  
15 including the allegations regarding how much it  
16 actually costs to prepare the bill were not, that  
17 should properly have been put in the direct  
18 testimony so that we would have had an  
19 opportunity to respond and it's not responsive to  
20 staff testimony.

21 Page 9 and 1 through 10, this is clearly  
22 not responsive to staff because they're

1       addressing an issue that they acknowledged  
2       Mr. Hoagg did not discuss in his testimony. And,  
3       again, it's in the nature of additional direct.  
4               Page 9, Line 17, through Page 11,  
5       Line 6. Again, it's a response to Smith's direct  
6       not staff's testimony.  
7               Page 11, Lines 8 through 15.  
8       MR. KELLY: What was that, through -- line  
9       what? I'm sorry.  
10       MR. ANDERSON: Page 8.  
11       MR. KELLY: On Page 11.  
12       MR. ANDERSON: 8 through 15.  
13       MR. KELLY: Thank you.  
14       MR. ANDERSON: Page 13, Lines 4 through 19.  
15       Page 15, Lines 8 through 19.  
16       JUDGE GILBERT: Do you mean 8?  
17       MR. ANDERSON: I withdraw that. I am not  
18       moving to strike those lines. I'm withdrawing  
19       what I was going to do there. I'm not moving to  
20       strike Line 6.  
21               So the only thing I'm moving to strike  
22       on Line 14 (sic) is Lines 2 through 4. And

1       actually there's another grounds for that.

2           MR. KELLY:  I'm sorry, go back again please.

3           MR. ANDERSON:  On Page 14, the only thing I'm  
4       moving to strike is Lines 2 through 4.  And this  
5       is a slightly different objection.  This is  
6       because it purports to disclose discussions that  
7       occurred in the back and forth during the  
8       negotiation phase.  And, generally, it's not  
9       appropriate to discuss that in testimony.

10          JUDGE GILBERT:  All right.  That was on 14.  
11       And you had been on 15 but you're not -- you  
12       don't have any more.

13          MR. ANDERSON:  I am not -- that's it.  Those  
14       were the -- so basically it's the last section I  
15       was moving to strike was Page 14, Lines 2 through  
16       4.

17                I don't have any more specific arguments  
18       to make that really add any more -- I mean, I  
19       could but in general, even though some of those  
20       questions may have a hook to, you know, the staff  
21       or reference to staff witness, in reality when  
22       you read the full question and answer, it's



1       simply responding to the company testimony and  
2       not the staff testimony.

3               Just to clarify complete, in addition  
4       based on the motion to strike Page 9, Line 17  
5       through Page 11, Line 6, this includes a  
6       discussion of the three exhibits.

7               So consistent with our objection to that  
8       testimony, we are also objecting to the  
9       admissibility of the exhibits discussed in that  
10      testimony.

11       JUDGE GILBERT:   Okay.   Sage, if you wanted to  
12      respond generally and then we can go through this  
13      piece by piece, or do you just want to start  
14      piece by piece?

15       MR. DONOVAN:   Your Honor, perhaps very briefly  
16      talking on a general level and then we can get  
17      into the nitty-gritty of the particular sections  
18      that SBC is seeking to strike.

19              It's my understanding as a general  
20      premise that staff has adopted SBC's position  
21      that if language in this interconnection  
22      agreement is to be included that deals with the

1 terms and conditions of billing and collection  
2 for ABS services, that staff's proposed ABS  
3 appendix is appropriate to use as the language in  
4 this interconnection agreement.

5 JUDGE GILBERT: You mean SBC's.

6 MR. KELLY: SBC.

7 MR. DONOVAN: Excuse me, I meant SBC's  
8 proposed ABS appendix.

9 And staff presented that their  
10 foundation and their support and their  
11 acknowledgment that they are making this  
12 recommendation through their testimony filed on  
13 October 10th.

14 Ms. Timko's rebuttal testimony is  
15 directly related to the positions advocated by  
16 staff because the position advocated by staff is  
17 that SBC's positions are correct. In order to  
18 rebut staff's positions, it is important that  
19 Sage have the ability to show why those positions  
20 are based on what we believe to be faulty  
21 foundations, what we believe to be incorrect --  
22 incorrect provisions with respect to the actual

1       ABS language should there be any included in the  
2       interconnection agreement.

3               So just as a general matter, just  
4       because we make reference to the SBC position, if  
5       we do so in Ms. Timko's testimony, it's not a  
6       rebuttal to SBC's position directly. It's a  
7       rebuttal to staff's adoption of it, SBC's  
8       position, and why that adoption is incorrect.

9               So I would just throw that out there as  
10       a general conversation and we can go into the  
11       particular details to discuss why each particular  
12       section is relevant to staff's testimony and in  
13       rebuttal to staff's testimony.

14              And I think with -- unless you have a  
15       particular issue, your Honor, with respect to the  
16       motion to strike Lines 11 through 20 of Page 3,  
17       staff has, I believe, in its testimony indicated  
18       that -- and, again, through its testimony today  
19       that they're not clear exactly what SBC's -- or,  
20       excuse me, what Sage's position is in this  
21       proceeding.

22              We have attempted in Ms. Timko's

1 testimony, starting on Page 2 and carrying over  
2 to the bottom of Page 3, to kind of put some  
3 flesh to our position so that the record is clear  
4 as to exactly what it is Sage is advocating for.

5           So that the language on Lines 11 through  
6 20 of Page 3 is a foundation for and is the meat  
7 of what Sage's position is in this proceeding.  
8 We believe that SBC's position is incorrect. We  
9 believe that staff's adoption of that position is  
10 incorrect and we believe -- and Ms. Timko is  
11 putting testimony on Page 3 to address why we  
12 believe that position is incorrect.

13           So it is certainly directly related to  
14 staff's testimony and should not be subject to  
15 any sort of motions to strike.

16           Did you have particular questions on  
17 that one, your Honor, or shall I just move to the  
18 next group of language?

19           JUDGE GILBERT: Well, let me ask, the question  
20 begins on Page 2, Line 15, by saying SBC and  
21 staff have indicated in the testimony and it goes  
22 on from there.

1           Can you point me to the indications in  
2       staff's testimony that you're referring to.

3           MR. DONOVAN:   Yes.   Just one moment please.

4           Your Honor, as the petition was filed,  
5       the first advocacy position that Sage stated is  
6       that they do not believe billing and collection  
7       terms are a regulated service and, therefore, are  
8       inappropriately concluded in the interconnection  
9       agreement.

10          Staff takes issue with that on Page 5 of  
11       Exhibit 1.  The question reads:  How do you  
12       recommend the Commission resolve Sage Issue 1  
13       being whether or not the terms should be included  
14       in the interconnection agreement?

15          And Mr. Zolnierrek testified that he  
16       agrees with SBC, that Sage Issue 1, as framed by  
17       SBC, is moot.  He goes on to explain that he  
18       thinks it's moot because of its conclusion of the  
19       language in Section 27.16.

20          The testimony that Ms. Timko has put  
21       forward is in direct rebuttal to that position.

22          JUDGE GILBERT:  All right.  I see the language

1 beginning on Line 11 on Page 3 as being an  
2 example and amplification of those portions of  
3 the answer that preceded into which no objection  
4 has been made. I'll deny the motion as to that  
5 material.

6 Next is Page 7.

7 MR. DONOVAN: Your Honor, the testimony on  
8 Page 7, the question actually starts on Line 13  
9 of Page 6 where we actually provide a direct  
10 quote from Mr. Hoagg, now Mr. Zolnierrek's  
11 testimony, which will be, I believe, Staff  
12 Exhibit 2 Page 5.

13 Actually, we provide two quotes from  
14 staff's testimony. And then the language at  
15 issue is in direct rebuttal to staff's advoc- --  
16 to staff's position based on that language in  
17 Mr. Hoagg's testimony. And to say that it's  
18 not -- to say that it's not directly rebutting  
19 staff's testimony is, I think, stretching a bit.

20 JUDGE GILBERT: I think staff's testimony, in  
21 particular in Mr. -- Dr. Zolnierrek's testimony  
22 does state, I think, in a couple of occasions

1       that if Sage has anything additional with respect  
2       to those issues that would cause staff to  
3       reconsider its conclusions, to show those  
4       materials. And I think that's what you're doing  
5       here, so I'll allow the materials on Page 7 and  
6       deny the motion.

7               Page 8.

8       MR. DONOVAN: Your Honor, the information on  
9       Page 8 is directly related to the information  
10      that we just discussed on Page 7. It deals with  
11      the revenue issue. It deals with the cost issue  
12      in direct connection to staff's -- the language  
13      you just cited from staff testimony seeking that  
14      additional information.

15      JUDGE GILBERT: Yeah, for the same reason,  
16      I'll allow that on 8. Motion denied with respect  
17      to that.

18              Top of Page 9, Mr. Hoagg does not  
19      discuss his -- in testimony.

20      MR. DONOVAN: Your Honor, we'll voluntarily  
21      strike that question and answer.

22      JUDGE GILBERT: Good.

1                   So that's -- outlines 1 through 10 on  
2     Page 9 are out.

3           MR. DONOVAN:   Yes.

4           JUDGE GILBERT:   Picking up at Line 17 on  
5     Page nine or running through Page 11, Line 6 is  
6     our next one.

7           MR. DONOVAN:   Again, your Honor, the question,  
8     I think, frames it up appropriately; that is,  
9     actually extract the quote from Mr. Zolnierrek's  
10    now testimony.

11                   And, actually, the essence of it is,  
12    staff's adoption, we believe, is based in part --  
13    and I believe supported by Mr. Zolnierrek's  
14    testimony today -- of the industry standard with  
15    respect to collections from end users.

16                   Staff is directly -- staff has directly  
17    addressed that issue in their testimony by the  
18    quote provided in the question on the bottom  
19    Page 9.   And we have a full response to staff's  
20    position.

21           MR. ANDERSON:   Just to clarify, maybe I missed  
22    the boat.   I thought the quote was from something



1       that SBC had filed.  Is there a quote -- I don't  
2       see any cite.

3           MR. DONOVAN:  Correct.  You're correct.  I  
4       didn't state the position properly.

5           MR. ANDERSON:  Other than Smith's direct,  
6       which was a quote from Ms. Smith's testimony, not  
7       Mr. Hoagg's.

8           MR. DONOVAN:  That's correct.  I misstated the  
9       position.

10          MR. ANDERSON:  So. . .

11          MR. DONOVAN:  It's our position that staff  
12       witness Dr. Zolnierrek has adopted the SBC's  
13       position with -- the general premise is, staff  
14       has adopted the ABS appendix proposed by SBC, and  
15       we have to provide rebuttal to staff's position  
16       to show that that appendix is not proper, not in  
17       the good policy that staff witnesses have chosen  
18       to use to discuss this.

19                 And with respect to the industry  
20       standard that staff has, I believe, bought off on  
21       in their testimony, we have -- we should have the  
22       opportunity to provide rebuttal to show that

1       that, in fact, is not the industry standard.

2               The industry standard deals with  
3       recourse that SBC allows its affiliates to have.  
4       Industry standards deal with recourse that  
5       National Exchange Carrier Association agreements  
6       have with their contract members.

7               It is not the industry standard that we  
8       believe staff has adopted in its testimony, and  
9       we needed to rebut that position by providing  
10      these other examples of what other billing and  
11      collection agreements pertain to.

12           JUDGE GILBERT:   Okay.   Go back for a moment to  
13      Mr. Anderson's remark.   Are you saying that the  
14      quoted language on Page 9 running from Line 17 to  
15      Line 19 is derived from Mr. Zolnierrek's  
16      testimony?

17           MR. DONOVAN:   No.   I misstated when I said  
18      that.   It is SBC's position that staff has  
19      adopted, and we feel that we need to have the  
20      ability to adopt -- to rebut that position in  
21      order to show -- in order to rebut staff, we have  
22      to rebut the position staff has adopted.

1                   Your Honor, if you give me one second,  
2           I'm trying to find another quote.

3                   Staff has also stated in its testimony  
4           that it believes the 35 percent cushion, as staff  
5           put it, provides adequate protection for Sage in  
6           its financial exposure.

7           MR. ANDERSON: Well, this question and answer  
8           doesn't go to that. I think there -- I didn't  
9           move to strike --

10          MR. DONOVAN: If you let me finish my thought,  
11          counselor.

12          MR. ANDERSON: I'm sorry.

13          MR. DONOVAN: That cushion is based upon  
14          staff's belief that the average industry  
15          uncollectible rate is 15 to 20 percent and Sage  
16          that has exceeded that.

17                   And staff has proffered that because the  
18          average uncollectible rate is 15 to 20 percent  
19          and this allows them a recourseability of to up  
20          to 35 percent that that is adequate protection.

21                   Our testimony here provides evidence  
22          that that is not the industry norm, that recourse

1 is available in other agreements, and it's  
2 directly related to staff's adoption of the  
3 cushion under the interconnection agreement.

4 MR. KELLY: Your Honor, I'd also note in  
5 Mr. Hoagg's testimony, now Dr. Zolniererek's, of  
6 course. There's a footnote 1 Page 4 where he  
7 says, in this connection, I note staff is aware  
8 of billing and collection agreements involving  
9 SBC that are not components Section 252  
10 interconnection agreements, et cetera.

11 You know, and we did some  
12 cross-examination of Dr. Zolniererek on this as  
13 well where we tried to inquire about whether he  
14 took these additional industry practices into  
15 consideration in his opinions. And I think we're  
16 entitled to put that information in the record,  
17 entitled to inquire that he did not, Mr. Hoagg  
18 didn't, or Dr. Zolniererek didn't, take into  
19 consideration these other alternative options  
20 that were available.

21 JUDGE GILBERT: Well, that can't be based on  
22 cross-examination though. It's got to be at

1       least colorably in response to what's in the  
2       written testimony.

3           MR. KELLY: Well, I agree with that. I guess  
4       my point is that, you know, this was an issue  
5       that was properly discussed with Dr. Zolnierrek.

6           And if I might, if you even continue  
7       with that answer that is not being moved to be  
8       stricken. It's just sort of -- it's all  
9       discussing the same point, and I think what SBC  
10      is trying to do is more strike the exhibits not  
11      necessarily the text.

12          MR. ANDERSON: Well, if I may respond to that.  
13      We're moving to strike the testimony, obviously,  
14      and the exhibits; but the issue here isn't  
15      whether staff in general supports the company's  
16      position; otherwise, this rule wouldn't mean  
17      anything. Any time staff would put in testimony  
18      that says between, you know, ILEC A and CLEC B,  
19      we support CLEC B, than that would open the door  
20      for rebuttal to the respondent's testimony and  
21      additional direct testimony supporting, you know,  
22      the rebutting party's position.

1           So there has to be something responsive  
2       to staff's testimony that could not have been  
3       raised in the direct testimony, which would have  
4       given us an opportunity to respond to it.

5           The fundamental problem here is not  
6       simply the violation of the procedural schedule  
7       in the rule but the unfairness. There's nothing  
8       in staff's testimony that elicits, you know, a  
9       discussion of what NECA allegedly does or what  
10      agreements Sage allegedly has with its -- with  
11      other carriers.

12           If Sage had felt that this was relevant  
13      to support their position, it was incumbent upon  
14      them to present it in their direct case. And I  
15      also note that I believe -- just one last  
16      comment, if you look at Page 1 of Ms. Timko's  
17      testimony where she discusses the purpose of her  
18      rebuttal testimony she says, The purpose of my  
19      rebuttal testimony is to respond to testimony  
20      filed by Commission staff witnesses and the new  
21      issues raised in the testimony put forth by SBC  
22      witness June A. Burgess and Roman A. Smith.

1                   Previously, you considered the argument  
2     made by Sage that SBC's discussion of industry  
3     standard was -- somehow raised a new issue, and I  
4     believe if we said, we were simply presenting  
5     evidence in support of our position as we have a  
6     right to do.

7                   So I believe that, in fact, that  
8     question and answer in particular appears to be  
9     directed at the so-called new issues raised by  
10    Ms. Burgess and Mr. Smith and not to anything in  
11    staff's testimony.

12           MR. LANNON: And, your Honor, if I may just  
13    interject. Although, we're not joining SBC in  
14    their position to strike, I do believe counsel  
15    for Sage has exaggerated staff's adoption of  
16    SBC's positions.

17                   We have agreed with them on a couple of  
18    points, which counsel referenced. However, our  
19    general recommendation was that the Commission  
20    adopt SBC's proposed three option approach. We  
21    have not adopted all of SBC's positions.

22           JUDGE GILBERT: All right. Well, this one is

1 really in the nature of a judgment call. And I'm  
2 going to do this:

3 I think a fair and I will have to say a  
4 generous reading of staff's testimony and those  
5 portions of SBC's case, that it appears to  
6 endorse, would permit this testimony as  
7 appropriate rebuttal to staff with one exception.  
8 And, again, I'm making a judgment call here. I  
9 guess both sides can certainly disagree with my  
10 judgment.

11 I feel like the NECA, N-E-C-A, agreement  
12 goes beyond what I think is a fair response. I  
13 think it's one thing for Sage to talk about its  
14 own agreements with others. I think you really  
15 range far and wide to find this NECA piece.

16 So I am going to strike the testimony  
17 from Line 8, beginning with the word "further,"  
18 through the end of that sentence on Line 11 and  
19 the citation. And I will strike Exhibit  
20 attachment C. The motion is denied with respect  
21 to the rest of it.

22 Page 11, the next part.



1           MR. KELLY: Your Honor, I'd just like to point  
2 out. We're not disputing your ruling. SBC had  
3 not moved to strike Lines 8 through 11 to the  
4 best of my knowledge.

5           JUDGE GILBERT: On Page 10.

6           MR. ANDERSON: Yes.

7           MR. KELLY: You did. Okay. I apologize.

8           MR. DONOVAN: Your Honor, going to the Line 8  
9 through 15 on Page 11, this goes back to a  
10 previously argument we made with respect to  
11 earlier testimony that they sought to have  
12 stricken.

13                   It's my understanding, again, that Sage  
14 has -- excuse me, that staff has -- well, I don't  
15 want to overstep bounds, but it's my  
16 understanding of staff's position that Sage has  
17 adopted the parameters contained in the 13-State  
18 ABS appendix proposed by SBC.

19                   This question, again, goes to the  
20 foundation of the -- our view of the impropriety  
21 of that recommendation and we should have the  
22 opportunity to provide rebuttal to staff's

1 position adopting SBC's position.

2 MR. ANDERSON: In light of your prior rulings,  
3 I withdraw my motion to strike, Page 11, Lines 8  
4 through 15.

5 JUDGE GILBERT: All right. Sobeit.  
6 13.

7 MR. ANDERSON: I will also withdraw that  
8 motion.

9 JUDGE GILBERT: 15 is withdrawn.

10 Finally 14, we're looking at a sentence  
11 starting on Line 2. You had a different basis, I  
12 believe, for that one.

13 MR. DONOVAN: Your Honor, we'll voluntarily  
14 strike that sentence.

15 JUDGE GILBERT: All right.

16 MR. ANDERSON: And I apologize. In light of  
17 that -- and I should have made this clear, too.  
18 I did miss an additional section which is  
19 directly related to those lines, and that is on  
20 Page 14. Page 14, Lines 14 through 19.

21 On the same grounds. I simply overlook  
22 that and I apologize.

1           MR. KELLY: Can you give us just one second,  
2           your Honor.

3           JUDGE GILBERT: Okay. I think what I'll take  
4           there is the sentence beginning with the word  
5           "during" on Line 14. And I believe the rest of  
6           it can be separate from that.

7           MR. ANDERSON: Thank you.

8           JUDGE GILBERT: So the sentence 14 through 15  
9           and ending the word "done" is out.

10          MR. DONOVAN: I believe that was the last of  
11          them.

12          JUDGE GILBERT: Yeah.

13          MR. ANDERSON: Thank you.

14          JUDGE GILBERT: That concludes ruling on the  
15          motion. I assume that Ms. Timko is available for  
16          cross-examination?

17                 Are you going to have anything,  
18          Mr. Lannon, for her?

19          MR. LANNON: Yes. I'll have a little, but  
20          I'll follow up.

21          MR. KELLY: Your Honor, could I just get a  
22          ruling that these exhibits are admitted into

1 evidence.

2 JUDGE GILBERT: Oh, yes I'm sorry.

3 Any other objections to them,

4 Mr. Anderson?

5 MR. ANDERSON: There was an exhibit with the

6 NECA. Obviously, that was within the scope of

7 ruling.

8 JUDGE GILBERT: Yes.

9 MR. ANDERSON: So our -- you know, obviously,

10 we objected to the other exhibits and stand on

11 that with respect to your ruling.

12 JUDGE GILBERT: Okay. Exhibit 2.0 and 2.0 P

13 are admitted and attachments A and B to those

14 exhibits are admitted .

15 (Whereupon, Petitioner's

16 Exhibit No. 2.0 and 2.0 P

17 were admitted into evidence.)

18 JUDGE GILBERT: That was A and B to the

19 rebuttal; correct?

20 MR. KELLY: Yes, your Honor.

21 JUDGE GILBERT: Those are admitted as well.

22 MR. ANDERSON: I guess I have just kind of a

1 strange question to ask at the beginning of  
2 cross, but I had thought you told me earlier,  
3 Mr. Kelly, that Ms. Timko intend to provide some  
4 clarification or changes to her testimony based  
5 on the revised ABS appendix. Is that --

6 MR. KELLY: I think the only thing is we  
7 addressed at the very beginning of the hearing  
8 what the position was with respect to that, and  
9 that helped clarify -- that is Sage's position as  
10 stated earlier. Right.

11 MR. ANDERSON: Thank you.

12 CROSS-EXAMINATION

13 BY

14 MR. ANDERSON:

15 Q. Would you please turn to Page 10, Line 6  
16 of your direct testimony.

17 Beginning at that portion of your  
18 testimony, you discuss a ruling of the Federal  
19 Communications Commission; is that correct?

20 A. That's correct.

21 Q. You're not a lawyer; is that correct?

22 A. No, I'm not.

1 Q. And you do not have a law degree?

2 A. No.

3 Q. Do you know whether the FCC decision to

4 which you refer in that case applied to billing

5 and collection for intrastate services?

6 A. I do not speak to that issue.

7 Q. So you don't know whether or not that

8 decision was specifically applicable to the

9 question of the regulatory status of billing and

10 collection for interstate services?

11 A. You're asking me if that decision included

12 a applicability to interstate; is that correct?

13 Q. I'm asking whether you know whether the

14 decision had to do with the regulatory status of

15 billing and collection for interstate services?

16 A. No, I'm not aware of that decision.

17 Q. Did you read the decision?

18 A. I briefly looked over it a long time ago.

19 I couldn't say that I can really talk about it

20 intelligently at this point other than in general

21 terms.

22 MR. ANDERSON: Your Honor, I'm going to move

1 to strike the question and answer beginning at  
2 Page 10, Line 6 through Page 11, Line 9.

3 The fact that Ms. Timko is not a lawyer  
4 or doesn't have a legal degree is not the basis  
5 for my objection, although that would go to the  
6 weight of the evidence obviously, it has to do  
7 with lack of foundation.

8 MR. KELLY: Hold on, your Honor, please.

9 Well, I would agree that, to begin, the  
10 answer at Line 10 through 14 on that page should  
11 be stricken in light of Ms. Timko's answer.

12 However, it goes on to say, I think,  
13 more generic statements about BNC arrangements in  
14 general. And I don't believe that the entire  
15 answer, which has been the proper foundation that  
16 there's a lack of foundation for the entire  
17 answer.

18 So we would agree that as such beginning  
19 on Line 10 through the end of Line 14 should be  
20 stricken, but we would object to the remaining  
21 being stricken.

22 JUDGE GILBERT: Mr. Anderson, do you want to

1       add anything?

2           MR. ANDERSON: I have nothing further.

3           JUDGE GILBERT: What I'm going to do is strike

4       the answer starting at Line 7 and going to

5       Line 14 as well as footnote 4. Well, I guess

6       that's all footnotes 2, 3 and 4 all going.

7           And, frankly, I don't think it's going

8       to make any difference because you'll cite it in

9       your brief anyway.

10          MR. KELLY: Yeah.

11          JUDGE GILBERT: And agree with Mr. Kelly that

12       the rest of the response really is the witness'

13       summary, certainly in part of Sage's position.

14       And with the rest, I think it's within the zone

15       of general information that the witness would

16       have in order to conduct her job.

17           And she certainly has that much

18       understanding of what the FCC does. So I'll deny

19       the motion with respect to Lines 15 on Page 10

20       through Line 9 on Page 11.

21          MR. ANDERSON: Okay.

22       BY MR. ANDERSON:



1           Q.   Ms. Timko, have you done any -- performed  
2           any research to determine whether the Illinois  
3           Commerce Commission has entered any orders  
4           declaring billing and collection arrangements to  
5           be unregulated?

6           A.   I have not done the research, no.

7           Q.   Do you know whether the Illinois Commerce  
8           Commission ordered that billing and collection  
9           arrangements in Illinois for intrastate services  
10          be de-tariffed?

11          MR. KELLY:  Objection to the use of the word  
12          de-tariffed.  I don't think it's a proper term  
13          used in Illinois.

14          MR. ANDERSON:  I don't think it's a term used  
15          in -- well --

16          MR. KELLY:  I'll withdraw the objection.

17          THE WITNESS:  Are you asking me if I'm aware  
18          that there's a rule in Illinois stating that ABS  
19          is unregulated?

20          BY MR. KELLY:

21          Q.   No.  Actually, I'm into asking that  
22          question.  I'm asking do you know whether there

1       is such an order.

2       A.   No.   No.

3       Q.   Okay.   So as far as you know, billing and  
4       collection practices have not been ordered by the  
5       Commission in Illinois to be removed from local  
6       exchange carrier's tariffs?

7       A.   As far as I know.

8       Q.   Okay.   Turn to Page 13 outlines 1 and 2.  
9       There you state that according to the Texas --  
10      Michigan and Texas Commissions billing and  
11      collections is not a regulated service; is that  
12      correct?

13      A.   Yes, that's correct.

14      Q.   Okay.   Now, when you refer to the Texas  
15      Commission, are you referring to the revised  
16      arbitration award of the Texas Commission in PUTC  
17      Docket 24542, portions of which are attached to  
18      the arbitration petition of Sage as Exhibit 8?

19      A.   Yes, that's the basis for my  
20      understanding.

21      Q.   Okay.   Do you have that exhibit?

22      MR. KELLY:   Do you have a copy for the

1 witness?

2 MR. ANDERSON: Well, I have a copy for me. I  
3 assume since it was attached to your petition,  
4 you might have a copy of it.

5 THE WITNESS: I have what we entered as an  
6 exhibit, which is a condensed version.

7 BY MR. ANDERSON:

8 Q. Okay. Let's try this and if I need to,  
9 I'll show you my copy if it's not matching up.

10 Can you point to any language in that  
11 order in which the Texas Commission concluded  
12 that billing and collection services for  
13 intrastate services are unregulated?

14 A. Where I got my understanding that it's  
15 unregulated is based on the arbitrator's decision  
16 in this document, which says Page 212 on it.

17 MR. KELLY: 212?

18 THE WITNESS: 212.

19 BY MR. ANDERSON:

20 Q. And does the arbitrator's decision  
21 beginning on Page 212 say anywhere on that the  
22 basis for its decision was a finding that billing

1       and collection services are unregulated?

2           MR. KELLY:  Objection.  The document speaks  
3       for itself.  The witness can testify about what  
4       her opinion is of where she derives that opinion  
5       but the document speaks for itself.

6           JUDGE GILBERT:  Well, I think that's a fair  
7       distinction.

8           MR. ANDERSON:  I'm sorry, is the ball in my  
9       court to ask another question now?  I'm not sure  
10      where we stand.

11          JUDGE GILBERT:  I'm not sure you have to ask  
12      another question.  I think the question can stand  
13      as modified.

14                  I mean, as I understand it, you're  
15      asking her what is it here that supports your  
16      position.

17          MR. ANDERSON:  Yes, that's essentially what  
18      I'm asking.

19          JUDGE GILBERT:  And I think that's a fair  
20      question to ask, and I thought Mr. Kelly's  
21      distinction was between that question and your  
22      asking what does this order mean.

1           MR. ANDERSON:  No, I wasn't meaning to ask the  
2           second question that you mentioned, if that's the  
3           way it came out.

4                   I'm asking what is it in this decision  
5           at Page 212 that Ms. Timko is relying on for her  
6           view that the Texas Commission found billing and  
7           collection services to be unregulated.  That's  
8           essentially the question I'm asking.

9           JUDGE GILBERT:  Sounds like a good question.

10          THE WITNESS:  Okay.

11                   Without speaking to the discussion prior  
12          to this section on Page 212 but only reading the  
13          sentence that starts with "first," my  
14          understanding of the arbitrator's position is  
15          that because ABT over UNE-P is complicated,  
16          involves a lot of different parties and parties  
17          don't -- you know, have a lot of disagreement  
18          about it, that it shouldn't -- it should not be  
19          part of the interconnection agreement.  That's my  
20          understanding.

21          Q.  So the decision was based upon the  
22          arbitrator's view of the complexity and other

1 factors you mention and not jurisdiction of the  
2 Commission over the matter; is that correct?

3 A. I'm not aware of a document that refers  
4 back to the particular jurisdictional cite.

5 Q. Okay. Fair enough.

6 Refer to Page 16, Line 13 and 15. There  
7 you state that, quote, Sage takes reasonable  
8 collection efforts at parity with its own  
9 collection efforts for its own charges, unquote;  
10 is that correct?

11 A. That is correct.

12 Q. If I understand your testimony at Page 18,  
13 your -- Sage's products offerings include local,  
14 toll and long-distance services as well features  
15 such as caller ID, call waiting and certain other  
16 features; is that correct?

17 A. Can you direct me to Page 18 where I state  
18 that.

19 Q. I'm sorry, it's direct Page 7, Line 18 to  
20 Page 7 -- I'm sorry, Page 6, Line 18; Page 7,  
21 Line 2.

22 A. Okay. I agree that Page 6, Lines 18 and

1       Page 7, Lines 1 through 4 accurately depicts what  
2       Sage offers.

3           Q.   Okay.  And that includes local, toll,  
4       long-distance, caller ID, call waiting and other  
5       features that can be obtained in addition to the  
6       bundled offer; correct?

7           A.   That's correct.  Yes.

8           Q.   All right.  Now, Sage includes charges for  
9       all of those services to a particular -- you  
10      know, provided to a particular customer on one  
11      monthly bill to that customer; is that correct?

12          A.   That's correct.

13          Q.   Okay.  And Sage would also include on that  
14      same monthly bill the per minute rate charged for  
15      long-distance calls which exceed the customer's  
16      allotted amount of long-distance minutes; is that  
17      correct?

18          A.   Yes, we do.

19          Q.   Sage includes ABS charges for incollect  
20      calls on a bill that is separate from the bill  
21      which Sage uses to charge for all of the local,  
22      toll, long-distance and other services that we've

1       previously discussed; is that correct?

2           A.   That's correct.

3           Q.   And the separate invoice for ABS incollect

4       charges is included in a separate envelope and

5       sent out at a separate time than the invoice sent

6       for these other local, toll, long-distance

7       features and other services; is that correct?

8           A.   It's not a yes or no answer.  We bill our

9       customers kind of on a rolling basis.  We don't

10      do them all just once a month.

11          Q.   All right.

12          A.   But our incollect bills are sent out once

13      a month.  So some customers, yes, they'll get

14      them in separate bill but they make get them at

15      the same time just based on where they fall and

16      on a normal billing cycle.

17          Q.   But for some customers, the bill for

18      Sage's local and long-distance calls may come at

19      a different time than the bill for ABS

20      services --

21          A.   Yes.

22          Q.   -- just because the two bills are sent



1 out on different billing cycles; correct?

2 A. Yes.

3 Q. Okay. Do the customer bills which Sage  
4 sends to its customers for local, toll, and  
5 long-distance services include return envelope  
6 for payment by the customer?

7 A. I am embarrassed to say, I don't know.

8 Q. Do you know whether that's -- that would  
9 be a requirement of the billing -- the rules  
10 governing billing and collection practices  
11 applicable to local exchange carriers in  
12 Illinois?

13 A. I think that would be a reasonable  
14 requirement. I don't speak to the cite.

15 Q. Okay.

16 MR. KELLY: I will object to the relevance of  
17 the question as it relates to Ms. Timko's answer  
18 here. I don't think she's talking about -- in  
19 her testimony on Page 16, she's not referring to  
20 practices in Illinois because they aren't in  
21 business in Illinois. She's referring to  
22 practices in Texas.

1 THE WITNESS: Thank you.

2 JUDGE GILBERT: Is there a ruling you want or  
3 you just want to make that clarification?

4 MR. KELLY: Just make that clarification. I  
5 don't want to the record to be -- you know,  
6 indicate that they've done anything wrong with  
7 respect to Illinois law because they haven't done  
8 anything with respect to billing.

9 MR. ANDERSON: I wasn't suggesting that. That  
10 wasn't my point, but let me move on.

11 BY MR. ANDERSON:

12 Q. So you don't know whether in the other  
13 states where you're providing service you have  
14 separate envelops -- I'm sorry, return envelopes  
15 for customers to use to make payment -- to remit  
16 payment.

17 I think you said you weren't sure.

18 A. Yeah. I'm really not sure, but I will be  
19 glad to find out and let you know.

20 Q. What about the separate invoices sent by  
21 Sage for ABS incollect charges? Do those  
22 separate bills include return envelopes for

1 payment by the customers?

2 A. Our company uses the same billing company  
3 for the incollect calls. You know, they package  
4 it and everything that we use for our regular  
5 bills.

6 So if they put the envelope in for that  
7 one, they'll put it for the other one. That's  
8 just part of agreement. So I'll find out.

9 Q. Does Sage make follow-up calls to  
10 customers whose payment for local, toll, and  
11 long-distance services are past due?

12 A. No.

13 Q. And Sage also doesn't make follow-up calls  
14 to customers whose payments for ABS incollect  
15 calls are past due; is that correct?

16 A. I'm sorry, I misunderstood your first  
17 question. Your first question was, do we make  
18 follow-up calls for customers on our -- for their  
19 regular bills.

20 Q. For their local, long-distance, toll bills  
21 when customers are past due, I assume you  
22 sometimes send out reminder notices?

1           A.    Yes, we do.

2           Q.    Do you ever have people in your customer  
3           care group or any employees make follow-up calls  
4           by telephone to those customers?

5           A.    Yes, we do.

6           Q.    Okay.  And that is not a practice that you  
7           follow with respect to customers with past due  
8           payments for the ABS incollect charges; isn't  
9           that correct?

10          A.    We do send reminder notices.  We do not  
11          call.

12          Q.    Okay.

13          A.    On the active incollects.

14          JUDGE GILBERT:  What do you mean by active  
15          incollects?

16          THE WITNESS:  Once an incollect has gone to a  
17          certain date, like blocking has been implemented  
18          there's no more charges on the bill, the customer  
19          has left us, they got a final bill.  It's over.  
20          They're done.  They're gone.  It goes to a final  
21          bill status, which is then sent to a completely  
22          different collection group.

1           Our -- Sage's collection efforts in  
2       general for our active customers aren't strong.  
3       I mean, there aren't a lot of people. We have an  
4       active group for what we call final bills. And  
5       they send out reminder notices and advise and  
6       actions, those kind of things.

7       Q.   Okay. I'm a little confused here. I just  
8       want to make sure I understand.

9           We asked a data request, data request  
10      No. 11 of our second set, describe the measures,  
11      if any, that Sage undertakes to communicate to  
12      its customers that failure to pay ABS charges  
13      will result in blocking of a ABS calls.

14           Do you recall that are question and  
15      answer?

16      A.   Yes, I do.

17      MR. KELLY: Mr. Anderson, what number is that  
18      again?

19      MR. ANDERSON: It's 11. No. 11.

20      BY MR. ANDERSON:

21      Q.   And in that response, you indicated that  
22      Sage has two separate forms of communications to

1 customers who failed to pay ABS charges; that  
2 their failure to pay will result in blocking of  
3 ABS calls; is that correct?

4 A. Yes, that's correct.

5 Q. And the one method is a past due reminder  
6 letter --

7 A. Yes.

8 Q. -- sent to a customer? One's a 30-day  
9 past due balance associated with an ABS charge?

10 A. That's correct.

11 Q. And you also discussed that for -- it's a  
12 second method of communication for those  
13 customers with unpaid ABS charges, Sage places  
14 the following message on all subsequent ABS  
15 invoices, Partial payments may be made for these  
16 charge. However, any amounts left unpaid for 60  
17 days could result in blocking of collect calls to  
18 your telephone line by Ameritech; correct?

19 A. Yes, that message appears on their invoice  
20 and follow-up invoices.

21 Q. Well, actually, that response does not  
22 indicate that it appears on the initial invoice;

1       isn't that correct?

2               In fact, the response indicates that

3       it's only on subsequent invoices for those

4       customers with unpaid ABS charges; isn't that

5       correct?

6       A.   I'd like to read my response to make sure.

7               Which question is this again, please?

8       Which DR?

9       Q.   11.

10       A.   Thank you.

11       JUDGE GILBERT:   Let's go off the record.

12               (Whereupon, a discussion

13               was had off the record.)

14       JUDGE GILBERT:   Okay.   We're back on.

15       THE WITNESS:   I need to clarify this.

16       BY MR. ANDERSON:

17       Q.   Okay.

18       A.   If you look at what we actually submitted

19       in response, which are copies of SBC -- I'm

20       sorry, copies of Sage's incollect bills, there's

21       a couple sentences on -- or a sentence on here.

22       It says, Partial payments may be made for these

1 charges. However, any amounts left unpaid for 60  
2 days could result in blocking of collect calls to  
3 your telephone line by Southwestern Bell.

4 That notice appears on every incollect  
5 bill that we sent, including the first invoice.

6 Q. Okay. Well that's -- I understand. Let  
7 me backtrack. I just -- I don't want to get off  
8 track here. We kind of did on this data request  
9 response.

10 My question really -- my clarification  
11 of this, for those active, you know, Sage end  
12 users who are past due on payments of their local  
13 and long-distance bills, Sage's practices at some  
14 point, there may be circumstances in which that  
15 customer actually gets a call, a reminder call,  
16 not simply a letter; correct?

17 A. That's correct.

18 Q. And if I understood your testimony, just  
19 to clarify, you do not make follow-up calls --  
20 Sage does not make up follow-up calls to those  
21 customers with past due amounts of ABS charges;  
22 correct?



1           A.   That's correct.

2           Q.   Okay.   Thank you.

3                   Does Sage have any procedures for  
4   verifying the credit worthiness of applicants for  
5   service?

6           A.   Sage does not engage in credit scoring.  
7   What we do -- our method of credit scoring is we  
8   only accept customers who are active with a  
9   certain set of telecommunication companies right  
10   now.   That way we know they haven't been  
11   disconnected for nonpayment, and we convert them.

12          Q.   Does Sage make any attempt to verify  
13   whether those applicants have satisfactory  
14   payment records with the customer's previous  
15   provider?

16          A.   Other than the information that our sales  
17   representative receives at the time of sale,  
18   which is the CSR, which used to be populated.   It  
19   used to say, you know, this is -- way back in the  
20   beginning, SBC used to say, you can't convert.  
21   They're past due.   They're a problem.   They don't  
22   do that any longer.

1           Q.   And Sage does not make any attempt, I take  
2           it, to verify whether an applicant for service  
3           has a satisfactory payment record with respect to  
4           ABS charges; is that correct?

5           A.   That's correct.

6           Q.   Are there any circumstances in which Sage  
7           requires an applicant for service to furnish a  
8           deposit?

9           A.   No.

10          Q.   And when setting up a new account for  
11          telecommunications service to a customer to be  
12          served over UNE-P, would it be correct to say  
13          that Sage does not take any steps to ensure that  
14          the new customer is likely to pay charges for ABS  
15          services?

16          A.   Just for ABS services, my answer would be  
17          yes.

18          Q.   My statement was correct?

19          A.   Your statement was correct.

20          Q.   Thank you.

21                   Please refer to Page 16, Line 13.  There  
22          you refer to the, quote, business procedures

1 currently in place, unquote; is that correct?

2 A. Yes.

3 Q. And is it your testimony that these  
4 business procedures or practices are based on the  
5 Texas Commission's interim order in PUTC Docket  
6 No. 24593 dated September 4th, 2001?

7 A. I'm sorry, could you repeat that.

8 Q. Is it your testimony that these business  
9 practices that you refer to, beginning at Line 13  
10 and also at Line 7 of Page 16, are based on the  
11 Texas Commission's interim or the in PUTC Docket  
12 No. 25593 dated September 4th, 2001?

13 A. Yes. That was one of the conditions.

14 Q. Okay. And would you agree that that order  
15 does not require Sage to issue separate invoices  
16 for ABS incollect calls?

17 A. That's correct.

18 Q. And, in fact, wouldn't it be correct that  
19 the order, the interim order, actually assumes  
20 that Sage will include charges for incollect  
21 calls on the same invoice that includes charges  
22 for the local telecommunications services

1 provided by Sage.

2 MR. KELLY: Can I just ask -- hold on, please.

3 Are you asking her interpretation of the

4 Commission's order if that's what the

5 Commission's order requires?

6 MR. ANDERSON: Well, yes. I'm asking whether

7 she believes or she agrees that the order assumes

8 that Sage would include charges for incollect

9 calls on the same invoice that includes charges

10 for telecommunications services.

11 MR. KELLY: Okay.

12 THE WITNESS: I don't agree with that

13 assumption, no.

14 BY MR. ANDERSON:

15 Q. Do you have copy of the order there?

16 MR. KELLY: We have a copy of the excerpt that

17 we attached to our petition.

18 JUDGE GILBERT: Exhibit 8?

19 MR. KELLY: Exhibit 8.

20 MR. DONOVAN: No, actually, I don't believe we

21 have a copy of that.

22 MR. ANDERSON: Actually, your Honor, that is

1       not --

2           MR. KELLY:  Oh, okay.  I'm sorry.

3           MR. ANDERSON:  Well, I have a copy of it which

4       you provided in response to a data request.  If I

5       could show you that.

6                   In fact, you may have it as attached to

7       the response to data request No. 2.

8           MR. KELLY:  Yeah.

9           JUDGE GILBERT:  And this is not an exhibit;

10       correct?

11          MR. ANDERSON:  It's not an exhibit.

12          THE WITNESS:  What portion would you want me

13       to refer?

14       BY MR. ANDERSON:

15           Q.  Would it be correct that in the

16       conclusion, which begins on Page 14 and carries

17       over to Page 15, the second bullet point states

18       sa follows:

19                   All partial bill payments as

20       distinguished from partial payments of the

21       incollect portion of the bill shall first be

22       applied to Sage's bill for local

1 telecommunications service plan in accordance  
2 with PUCSUBSTR-26-27B6, any remaining balances to  
3 be applied to SWPTs charges with incollect calls  
4 and remitted to SWPT.

5 MR. KELLY: You're asking whether with witness  
6 see that language.

7 MR. ANDERSON: I'm asking whether it states  
8 that in the order, yes.

9 MR. KELLY: We'll stipulate to that.

10 THE WITNESS: Oh, yeah.

11 (Whereupon, a discussion  
12 was had off the record.)

13 BY MR. ANDERSON:

14 Q. Beginning on Page 30, Line 10 of your  
15 direct. There you include some testimony  
16 referring to what you refer to as alleged, quote,  
17 financial implications, unquote; is that correct?

18 Page 30, Line 10.

19 A. Apparently it's predicated on the previous  
20 question; so...

21 Q. Okay. But you see where I'm referring to  
22 beginning on Page 30, Line 10?

1           A.    I have your reference, yes.

2           Q.    Okay.  Do you have a degree in -- are you  
3   an accountant?

4           A.    No, I'm not.

5           Q.    Do you have a degree in accounting?

6           A.    No.

7           Q.    Do you have a degree in finance?

8           A.    No.

9           Q.    Do you have a degree in economics?

10          A.    No.

11          Q.    Have you ever worked in the accounting or  
12   financial division of a company or corporation?

13          A.    No, I have not.

14          Q.    Would you please refer to your rebuttal  
15   testimony.

16                Bear with me one second.

17                Would you agree that Section 27.16 of  
18   the interconnection agreement attached to the  
19   Sage petition entitled, Alternatively Billed  
20   Call, Retail Services and Network Elements, would  
21   provide for Sage to bill and collect incollect  
22   ABS calls on behalf of SBC?

1           A.   My understanding of Section 27.16 that's  
2   what a requirement of billing.

3           Q.   And under that language, Sage understands  
4   that it would remit all of what it is able to  
5   collect to -- of those ABS charges; correct?

6           A.   Our understanding is anything we get from  
7   Sage's end user would be remitted directly back  
8   to SBC, yes.

9           Q.   And that provision calls for a billing of  
10   collection credit from SBC to Sage of 3 cents per  
11   bill message; correct?

12          A.   Yes, that's the allowance made in that  
13   section.

14          Q.   And just to make the record clear, you  
15   understand that Mr. Smith has testified that that  
16   should be 5 cents?

17          A.   I understand he's testified that.  It has  
18   not been amended.

19          Q.   Now at Page 5, Line 16 to 21 --

20          MR. KELLY:  Of rebuttal?

21          MR. ANDERSON:  Yes.  This is all in rebuttal.

22          BY MR. ANDERSON:



1           Q.   At Page 5, Line 16 to 21, you state -- and  
2           I may be paraphrasing, but if I'm -- I think I  
3           have this correctly.

4                     If I understand your testimony there,  
5           you're stating that as an alternative to  
6           Section 27, Sage would be willing to live with an  
7           ABS appendix as Sage proposes to amend it in  
8           Exhibit 3 to the arbitration petition; is that  
9           correct?

10          A.   If the Commission determines that 27.16 is  
11          not the way to go, that it would need to put --  
12          do some type of appendix, it's Sages position  
13          that we would like our red line version of SBC's  
14          proposed 13-State.

15          MR. KELLY:   Subject to the addition we made  
16          this morning with the addition of Option 1  
17          proposed by Mr. Smith.

18          BY MR. ANDERSON:

19          Q.   Just so I'm clear, on Page 5, Lines 20 to  
20          21, you indicate that under that red lined  
21          appendix, Sage is required -- all Sage is  
22          required to do is bill, collect and to recourse

1       any revenues received back to SBC for its own end  
2       user charges, unquote. Is that what you state  
3       there?

4           A. That's exactly what it says. I want to  
5       clarify, "recourse" is "remit."

6           Q. I was just going to ask you that, whether  
7       you went meant "remit."

8           A. Remit.

9           Q. So under 27 of the agreement, you remit  
10      everything you collect?

11          A. Yes.

12          Q. And you're saying that under the appendix,  
13      you would remit everything you collect?

14          A. Everything we collect on behalf of SBC  
15      from our end users is remitted in Option 2, which  
16      I guess will now be Option 3, we keep 50 percent.

17          Q. So you keep 50 percent of the face value  
18      of messages collected?

19          A. Of what is collected, yes.

20          Q. And in 27 of the agreement, you keep --  
21      you remit all of what you collect, so you don't  
22      keep any of the face value of what you collect.

1           A.   That's correct.

2           Q.   Okay.  And under both approaches, you  
3           would recourse all uncollectible back to SBC;  
4           correct?

5           A.   Under both approaches we have full  
6           recourse.

7           Q.   So under your alternative red line,  
8           basically you're taking away half of what you're  
9           willing to provide SBC in Section 27 under the  
10          agreement; correct?

11          A.   That's correct.

12          Q.   Right.  And, whereas, in Section 27, you  
13          agree to a 3 cent credit.  In the red lined  
14          alternative you're proposing, you're proposing a  
15          fee of 40 cents per billed message; correct?

16          A.   That's correct.

17          Q.   So your alternative to the agreement  
18          you've already agreed to is to provide SBC half  
19          of what you agree to for a credit which is -- in  
20          exchange for a credit 8 times -- or more than 8  
21          times what you agreed to in Section 27; would  
22          that be a fair summary?

1           A.   More than 8 times what I agreed to in  
2   Section 27.16?

3           Q.   Correct.

4           A.   I can't verify the 8 times.  I'm not an  
5   accountant.

6           MR. KELLY:  This was the same calculation --  
7   actually -- I'm sorry.

8           THE WITNESS:  Sorry.  It's the 8.

9   BY MR. ANDERSON:

10          Q.   Many times greater.  How about if I  
11   rephrase it?

12          A.   Oh, I'm sorry.  I understand.  I'm sorry.  
13   I was thinking 50 percent.  Yes, eight times.  
14   Yes.

15                 Sage proposes a 40 cent billing and  
16   collection fee which is 8 times more than the 5  
17   cents Mr. Smith says will be amended in the 27.16  
18   for billing.

19          Q.   And this is the alternative you're holding  
20   out as an alternative to what you've already  
21   agreed to; is that correct?

22          A.   Yes.

1           Q. All right. Please refer to Page 8, Lines  
2           4 and 5. There you state that it costs Sage  
3           \$1.07 to package, create and bill one Sage  
4           customer for SBC's collect call charges; is that  
5           correct?

6           A. Under the current billing methods for  
7           SBC's incollect charges that is correct.

8           Q. Okay. And this would include the cost of  
9           preparing a separate bill from the bill used for  
10          the end users local toll and long-distance  
11          services; correct?

12          A. Yes. Those are the current practices we  
13          use for SBC's incollect charges.

14          Q. And this would include in addition the  
15          cost of sending the separate bill for ABS  
16          services and the postage necessary to send a  
17          separate bill for ABS services; is that correct?

18          A. Yes, it does.

19          Q. Okay. Thank you.

20                 Okay. Page 10, Lines 2 to 3. There you  
21          refer to a document which you refer to as, quote,  
22          SBC standard agreement for billing and collection

1 services between XX, unquote. Do you see that?

2 A. Yes.

3 Q. Does -- are you referring to what has been

4 attached to your testimony as Exhibit A?

5 A. I think it was admitted as attachment A.

6 Q. I'm sorry, attachment A.

7 A. Yes.

8 Q. Does it -- can you point to me where it

9 says anywhere on that agreement that this is,

10 quote, SBC's standard agreement for billing and

11 collection services, unquote?

12 Is that just your description of it?

13 A. This is my description of it for reference

14 purposes.

15 Q. So the agreement itself does not state on

16 its face that it's a standard agreement for

17 billing and collection services; would you agree?

18 A. That it is not entitled standard.

19 Q. Okay. Is there any language in the

20 agreement that states that it's the standard

21 agreement for billing and collection services?

22 A. I -- it's been -- without sitting here and

1 reading it again, I cannot recall offhand a  
2 particular section that refers to it as the  
3 standard agreement.

4 I will tell you that I implied that  
5 because of the -- in 1.2B it has check boxes for  
6 the parties that are considered SBC Telco, which  
7 indicates to me this is a document that's used  
8 quite frequently.

9 Q. Well, this is an agreement between SBC  
10 Advance Services, Ameritech Advance Data  
11 Services, Ameritech Advance Data Services of  
12 Indiana, several Advance Data Services and  
13 Ameritech Southwestern Bell, Pacific Bell, Nevada  
14 Bell and Southern New England Telephone; correct?

15 A. As well as Ameritech Indiana, Ameritech  
16 Michigan, Ameritech Ohio.

17 Q. Okay. And therefore it's an agreement  
18 that would be used by those regional local  
19 exchange companies, Ameritech, Southwestern Bell,  
20 Pacific Bell, Nevada Bell, Southern New England  
21 with the particular advanced services affiliates  
22 which are mentioned on the title of the contract;

1 correct?

2 A. That's what I understand this agreement to  
3 be.

4 Q. Right. And so it wouldn't be surprising  
5 to have boxes where you would check off which  
6 ILEC the agreement is applicable to as between  
7 the ILEC -- particular ILEC and those advance  
8 services affiliates; correct?

9 A. Well, sure. If you have an agreement  
10 you're going to use over and over again, you put  
11 boxes and you check which one it's applicable to.

12 Q. When say over and over again, this is an  
13 agreement between those companies and certain  
14 advanced services affiliates; correct?

15 A. This agreement admitted into evidence is  
16 an agreement between the data services companies  
17 and the companies outlined in the --

18 Q. Right. The ILECs.

19 A. Yes.

20 Q. Okay. But there's nothing in here that  
21 indicates that this is a standard agreement used  
22 by the ILECs with other types of affiliates; is



1       it?

2           MR. KELLY:  Objection.  Asked and answer.

3           MR. ANDERSON:  I haven't asked that question,

4       or she hasn't answered it.

5           JUDGE GILBERT:  You can answer.

6           MR. KELLY:  She said she didn't see any

7       particular agreement.  The reason she thought

8       that though was because of the preprinted boxes

9       with the names of the LECs next to it.

10          MR. ANDERSON:  The boxes are for the RBOCs,

11       one side of agreement, which party to this

12       agreement.  I'm asking about the other side of

13       the agreement, the other affiliates.

14          MR. KELLY:  Sorry.

15       BY MR. ANDERSON:

16          Q.  Between the ILECs and the advance

17       services, this is an agreement that you've

18       attached to your testimony.  But there's nothing

19       in here that indicates that this is the standard

20       agreement used by the ILECs with other types of

21       non-ILEC affiliates; isn't that correct?

22          A.  I don't thing there's anything in that

1       agreement to say one way or the other.

2           Q.   So you don't know whether it's the  
3       standard agreement used with all affiliates;  
4       correct?

5           A.   I think that's correct.

6           Q.   Okay.   Refer to Page 10, Lines 5 to 6.  
7       There you refer to Exhibit B, which you  
8       characterize as, quote, a series of billing and  
9       collection contracts between Sage and other CLEC,  
10      slash, ILECs, unquote; is that correct?

11          A.   That's correct.

12          Q.   Okay.   In fact, these are not billing and  
13      collection agreements; isn't that correct?

14          A.   We term them billing and collection  
15      agreements.   It just so happens the provisions  
16      are exclusive to a BNA arrangement.

17          Q.   Now, at Page 10, Lines 19 to 20, you state  
18      that under the BNA -- and that's all caps --  
19      agreements the, quote, CLEC provides Sage with  
20      the telephone number of the Sage end user who  
21      accepted the collect call charges of the CLEC or  
22      ILEC and Sage in turn provides the bill and

1 address to the CLEC which it uses to the bill  
2 Sage's end user; is that correct?

3 A. That is correct.

4 Q. So you're testifying that these agreements  
5 are used to provide, let's say, an incorrect call  
6 from another carrier which has accepted --  
7 authorized and accepted by a Sage end user.

8 You're saying that this agreement would  
9 provide for Sage providing the BNA information to  
10 that other carrier so that the carrier could  
11 direct bill the Sage end user for the collect  
12 calls that it authorized and accepted; is that  
13 your testimony?

14 A. Yes, that's the intent of the billing and  
15 collection agreements.

16 Q. Would you look at the first agreement, the  
17 one between Sage Telecom and Vartech Telecom.

18 Take a look at Page 2 and in particular  
19 Section 4.1. Is it correct that that states  
20 that, Vartech -- beginning with the second  
21 sentence, Vartech may use the BNA information in  
22 order to bill the Sage customers directly for

1 Vartech services where the Sage customer placed  
2 the following types of calls, 1-plus 10-XX,  
3 collect or third-party interstate calls; is that  
4 correct?

5 A. You're reading is correct.

6 Q. Okay. So that indicates that this is  
7 being used by Vartech to bill a Sage customer  
8 where the Sage customer picks up the phone and  
9 places a 1-plus or 10-XX call using Vartech  
10 services; correct?

11 A. This agreement represents collect calls  
12 carried by Vartech, provided by Vartech to Sage  
13 end users for which Sage accepted the charges  
14 from Vartech.

15 Q. When a Sage customer accepts a collect  
16 call, is the Sage customer placing a call or  
17 accepting a call?

18 A. They are accepting a call.

19 Q. Okay. And this agreement applies in the  
20 situation where the Sage customer places a call;  
21 correct?

22 A. That's the language used in Section 4.1.

1           Q.   Now look at Section 3.1.  In the second  
2           paragraph, it discusses the situation in which  
3           Vartech may implement blocks on a Sage end user  
4           for which Sage fails to send the BNA to Vartech  
5           allowing Vartech to bill; is that correct?  Is  
6           that what that paragraph covers?

7           A.   That's what it's referring to, yes.

8           Q.   And the that paragraph discusses Vartech's  
9           right to, quote, effectively blocking such end  
10          users from being able to access Vartech's network  
11          for 1-plus originating, 10-XXX and ANI based  
12          originating calls; is that correct?

13          A.   That is the language in the agreement.

14          Q.   Okay.  So that language doesn't even cover  
15          the situation in which a Sage customer may accept  
16          or authorize a collect call from Vartech or  
17          another carrier; correct?

18          A.   I believe you could characterize this  
19          language that way.

20          Q.   Which way?

21          A.   As you've just stated.

22          Q.   So --

1           A.   But this only covers outcollects, not  
2   incollects.

3           Q.   In fact, this agreement only covers  
4   outcollects, not incollects; isn't that correct?

5           MR. KELLY:  You're asking whether the company  
6   is operating under this agreement only on an  
7   outcollect basis?

8           MR. ANDERSON:  I'm asking whether with this  
9   language -- and I've pointed to language in 4.1  
10   and 3.1 -- is applicable to outcollects and not  
11   incollects.

12          THE WITNESS:  No, that's not an accurate  
13   representation.

14          BY MR. ANDERSON:

15          Q.   Do you know -- does Vartech provide  
16   interexchange calls?  Is it an interexchange  
17   carrier?

18          A.   Vartech is an underlying interexchange  
19   carrier, yes.

20          Q.   So Vartech would be entering into this  
21   agreement in order to get BNA information from  
22   you so that it could bill customers, Sage

1 customers, who pick up the phone and are either  
2 presubscribed to Vartech as an interexchange  
3 carrier, thus the 1-plus reference, or perhaps  
4 picks up the phone, uses Vartech to make a dial  
5 around call, hence the 10-XXX; right? Is that  
6 correct?

7 A. Those are some of the calls they're  
8 referring to, yes.

9 Q. And in each of those situations, the  
10 customer would have to pick up the phone and make  
11 conscious decision that it was going to use  
12 Vartech to make that particular call; correct?

13 A. That's correct.

14 Q. And would you agree -- now looking at the  
15 next agreement, would you agree that the second  
16 agreement which you've attached between Sage  
17 Telecom and Transaction Network, Inc., is in all  
18 respects identical to the Vartech agreement with  
19 the exception of the date on which it was entered  
20 and the name of the customer?

21 A. Yes, that's correct, the same would be  
22 correct.

1           Q.   So much Transaction Networks is an  
2   interexchange carrier, too, I take it?

3           A.   I do not believe Transaction Networks is  
4   an interexchange carrier. My understanding is  
5   that Transaction Networks acts like a billing  
6   clearinghouse of some type.

7           Q.   But it's not a CLEC or an ILECs; is it?

8           A.   Not that I'm aware of at this time.

9           Q.   What about the next agreement with MCI  
10   WorldCom? That's identical to the Vartech and  
11   TNI agreements; correct?

12          A.   In that it includes 1-plus 10-10 collect  
13   and third-party calls, yes.

14          Q.   Well, I mean, in every respect it's  
15   identical, I think. It's the same language;  
16   isn't it?

17          A.   Yes. Yes, it is.

18          Q.   Okay. And MCI WorldCom is an  
19   interexchange carrier; correct?

20          A.   I believe you just asked me that. That's  
21   what I was referring to.

22                You're asking if they're an



1       interexchange carrier?

2           Q.   I'm asking you that now.

3           A.   They're an interexchange carrier and a

4       CLEC.

5           Q.   Well, is the MCI WorldCom that entered in

6       this agreement a CLEC or the IXC, or do you know?

7           A.   I don't know and the agreement doesn't

8       speak to --

9           Q.   So you don't know whether this was entered

10       into with Sage by MCI in MCI's capacity as a CLEC

11       as opposed to an IXC?

12          A.   No.   I can find out.

13          Q.   Now, you also got one here with Sprint

14       which looks different than the other ones.

15                Do you know whether this agreement was

16       entered into between Sprint and Sage in Sprint's

17       capacity as an IXC?

18          A.   I was --

19          MR. KELLY:   I just -- go ahead.

20          THE WITNESS:   I didn't negotiate this

21       agreement.   However, this agreement does allow

22       for affiliate -- for Sprint affiliates to be

1 party and to participate in the terms and  
2 conditions of this agreement.

3 BY MR. ANDERSON:

4 Q. Okay. Did you negotiate any of these  
5 agreements?

6 A. No, I did not.

7 Q. One was the first time you looked at these  
8 agreements?

9 A. Wow. Probably February, March of this  
10 year.

11 Q. By the way, are any of those entities  
12 ILECs? Any of the entities that entered into the  
13 four agreements that you attached?

14 A. The Sprint agreement includes affiliate  
15 transactions. A Sprint affiliate, there is an  
16 affiliate under the Sprint umbrella that is an  
17 ILEC.

18 Q. Do you know whether that ILEC affiliate  
19 actually utilizes that agreement?

20 A. We receive the BNA request in one e-mail.  
21 They do not distinguish which affiliate is  
22 associated with each call.

1           Q.   So you don't know whether the Sprint ILEC  
2           affiliate is operating under that agreement or  
3           not?

4           A.   No.

5           Q.   Okay.  So as far as you know, it may just  
6           be the interexchange carrier entity of Sprint  
7           that's using that agreement?

8           A.   That would be a possibility.

9           Q.   Okay.  Would you please refer to Page 11,  
10          Lines 12 through 15.  There you state that Sage  
11          has never agreed to accept third-party  
12          incollects; is that correct?

13          A.   That's correct.

14          Q.   Okay.  Would you please refer to Section  
15          27.16 of the agreement attached to your petition.

16          JUDGE GILBERT:  What exhibit number is that?

17          MR. DONOVAN:  That's --

18          MR. LANNON:  2.

19          MR. DONOVAN:  -- 2 to the petition.

20          JUDGE GILBERT:  Anyone have one I can use.

21          MR. LANNON:  You can use mine, your Honor.

22          JUDGE GILBERT:  Thank you.

1                   And has this document now been  
2                   superseded?

3           MR. KELLY:  No, your Honor.

4                   Although just to clarify too there's  
5           a -- well, I won't clarify that.  I'm sorry.

6           JUDGE GILBERT:  Okay.

7           BY MR. ANDERSON:

8           Q.  All right.  Now, in 27.16.3, Sage agrees  
9           to bill and collect for, quote, incollects,  
10          unquote; is that correct?

11          A.  That's correct.

12          Q.  Would you agree that in 27.16.1 incollects  
13          are defined to mean, quote, calls that are placed  
14          using the services of SBC Ameritech or another  
15          LEC or LSP and billed to a resale service line or  
16          to a network element, e.g., switchboard of the  
17          CLEC?

18          A.  Do I agree that that's a definition of  
19          incollects per this section?

20          Q.  Yes.

21          A.  Yes.

22          Q.  So you have agreed to collect -- you have

1       agreed to bill and collect in this section  
2       charges for call that are placed using the  
3       services of third-parties to the agreement,  
4       namely LECs or LSPs, which are not SBC Ameritech;  
5       isn't that correct?

6           A.   Sage would gladly bill and collect for  
7       those as long as we got the language in Section 6  
8       that we're proposing.

9           Q.   But you've agreed to this language;  
10       correct?

11          A.   We've agreed to this definition, yes.

12          Q.   Okay.   So you have --

13          MR. KELLY:   Subject to getting Section 6  
14       sentence additionally.

15       BY MR. ANDERSON:

16          Q.   Okay.   Well, let's look at another  
17       agreement.

18                Do you have the petition there?   I would  
19       refer you to Exhibit 5, which is an  
20       interconnection agreement between Ameritech  
21       Michigan and Sage Telecom.

22                Do you have that there?

1           A.   Exhibit 5, yes.

2           Q.   And would you refer to the second page of  
3           that exhibit, which includes Section 27.16,  
4           alternatively billed calls, resale services and  
5           network elements.

6           A.   Yes, I have that.

7           Q.   And would you agree, without me having to  
8           step all these sections as I just did with the  
9           other agreement, would you agree that this  
10          language -- in this language Sage has agreed to  
11          collect charges for incollect calls placed using  
12          the services of not only SBC Ameritech but also  
13          other LECs, LECs, or LSPs?

14          A.   Sage agreed to enter into this agreement  
15          with that language under the understanding that  
16          SBC would abide by the ruling in Texas.

17          MR. ANDERSON:  I'm going to move to strike the  
18          last part of that sentence.  I didn't ask what  
19          understanding she had for entering into it or why  
20          she entered into it.

21                   I'm simply asking whether or not Sage  
22          agreed to this language which would commit it to

1       billing and collecting for third-party LEC calls.

2           JUDGE GILBERT:   Denied.

3       BY MR. ANDERSON:

4           Q.   And would you agree that -- by the way,

5       when was that Texas ruling?

6           A.   Are you referring to the interim order or

7       to --

8           Q.   The order you just mentioned.

9           A.   -- the arbitration order?

10                  I was referring to the interim order,

11       and I believe it was 2001.

12                  Hold on.   I have to look at the

13       document.

14           Q.   Also in Exhibit 6, you have excerpts from

15       an interconnection agreement between Sage and

16       Wisconsin Bell; is that correct?

17           A.   That is correct.

18           Q.   And again in that agreement as in the

19       Michigan agreement and as in 27.16 of the

20       agreement in this case, Sage has agreed to bill

21       and collect charges for calls placed using the

22       services of SBC Ameritech as well as other LECs

1 or LSPs; correct?

2 A. My response is the same as my response for  
3 Michigan, yes, we agreed to this language.

4 Q. Okay. So when you state at Page 11 that  
5 Sage has never agreed to accept third-party LECs,  
6 that's simply wrong; isn't it?

7 A. Sage has never agreed to bill and collect  
8 for third-party incollects without the protection  
9 of full recourse.

10 Q. But that's a different statement than what  
11 you made in your testimony; correct?

12 A. That is different from what's stated in  
13 the testimony, yes.

14 Q. And, in fact, the inter- -- agreements do  
15 make mention of passing third-party ABS to Sage.

16 A. Section 27.16.1 does make mention of LECs.

17 Q. So the statement at Lines 13 to 14 would  
18 also be incorrect; right?

19 A. Line 13 beginning with the sentence that  
20 reads, Interconnection agreements between Sage  
21 and SBC make no mention of passing third-party  
22 ABS to Sage is incorrect.



1           Q.   Okay.   Thank you.

2                   At Page 14, Lines 13 through 14, you  
3   suggest Sage would never be able to verify what  
4   records are SBC and which are third-party; is  
5   that correct?

6           A.   At this time Sage cannot distinguish  
7   between third-party and SBC calls.

8           Q.   Do you know whether the DUF records which  
9   SBC sends to Sage have an identifier which would  
10   identify the OCN of the third-party?

11          A.   They do not at this time as transmitted to  
12   us.

13          Q.   Okay.   Would you please turn to Page 17,  
14   Lines 4 through 10.

15                   There you refer to an SBC response to a  
16   staff data request.   Data request No. 5, do you  
17   have that there?

18          A.   Yes, I do.

19          Q.   In reading this question and answer to the  
20   data request, do you understand that the  
21   information that SBC Illinois was providing to  
22   staff was the percentage of amounts paid to SBC

1 by particular CLECs and not the percentage of  
2 amounts collected by the CLEC from its customers?

3 A. Frankly, it took me a while to figure out  
4 what was being reported in this spreadsheet. If  
5 I read the data requests -- and there are  
6 actually two reports that were provided in  
7 response to this data request.

8 Report 5, dash, bill all and Report 5,  
9 dash, disputes. And what I refer to is the  
10 Report 5, dash, disputes. And the way I  
11 interpret the explanation of that report is that  
12 it shows what SBC was not able to collect from  
13 CLECs due to CLECs disputing ABS charges or  
14 special reports. Like Sage does their tracking  
15 report where they're, you know, saying this was  
16 uncollectible or other kinds of communications.

17 Q. Okay. So your percentage is based on the  
18 fact that there's information here that where  
19 there's disputes between, you know, disputed  
20 amounts, there are certain percentage that SBC  
21 Illinois has not collected in a particular month  
22 of those disputed amounts; correct?

1           A.   That's correct.

2           Q.   Okay.  And the percentage does not  
3   represent -- or the percentage you show on Line 7  
4   in the proprietary version does not represent the  
5   percentage of ABS charges that a CLEC or any  
6   other carrier was unable to collect from its end  
7   users?

8           A.   No, it doesn't.

9           MR. KELLY:  I would point out for the record,  
10   though, that is the request made by staff and it  
11   is the information that was provided by SBC.

12          MR. ANDERSON:  I don't know what to make of  
13   that.  I think the witness has testified and. . .

14   BY MR. ANDERSON:

15          Q.   Now, there is a chart showing the table  
16   bill all, correct, which you did not use in your  
17   calculations?

18          A.   Yeah, I couldn't figure that one out.

19          Q.   Okay.

20          JUDGE GILBERT:  That chart is part of the data  
21   response?

22          MR. ANDERSON:  Yes.  I will leave that.

1                   Let's see if I have anything else  
2       because I think I'm almost done here.  
3                   I have nothing further, your Honor.  
4       Thank you.  
5           MR. LANNON:   Staff has no questions of  
6       Ms. Timko.  
7           JUDGE GILBERT:   Okay.   You guys want to do  
8       redirect?  
9           MR. KELLY:   Can I have just a couple minutes?  
10       I have maybe five or six questions I want to go  
11       over.  
12          JUDGE GILBERT:   Okay.   So you're determining  
13       what your redirect questions will be or you're  
14       determining whether you would do redirect?  
15          MR. KELLY:   Determining whether I will do  
16       redirect.  
17          JUDGE GILBERT:   Okay.   Great.  
18                               (Whereupon, a brief  
19                               recess was taken.)  
20          JUDGE GILBERT:   Redirect?  
21          MR. KELLY:   Yes, your Honor.  
22

1 REDIRECT EXAMINATION

2 BY

3 MR. KELLY:

4 Q. Ms. Timko, you were talking -- or you were  
5 going through some of the BNAs agreements that  
6 you have with WorldCom and Sprint, et cetera.

7 If an MCI customer, MCI WorldCom  
8 customer makes a 10-XXX intraLATA call, does --  
9 in that situation does your BNA agreement allow  
10 for MCI to get BNA information on that -- for  
11 that customer to bill that customer directly?

12 MR. ANDERSON: Excuse me, could I have the  
13 question read back.

14 (Whereupon, the record was  
15 read as requested.)

16 THE WITNESS: Yes.

17 BY MR. KELLY:

18 Q. Do you require deposits for -- like in  
19 Texas, for example, do you require deposits from  
20 Southwestern Bell Telephone's ABS customers that  
21 also happen to be local exchange customers for  
22 Sage?

1           A.   We don't require deposits from our  
2 customers.

3           Q.   Now you were -- or the SBC, Southwestern  
4 Bell Telephone customers that are completing the  
5 incollect calls?

6                   I'm sorry, that -- to which incollect  
7 calls have been terminated to?

8           A.   We don't require deposits.

9           Q.   Now, you talked about from -- that --  
10 well, how often do you call your customers to  
11 make collection efforts on unpaid local exchange  
12 carrier bills submitted by Sage, or under what  
13 circumstances would you make those calls?

14          A.   Well, the customer has to go 60 days or  
15 more.   It's --

16          Q.   Do you call every customer that's 60 days  
17 or more?

18          A.   No, we don't.   It's a new process and I  
19 have to put it out here because it's what we do,  
20 and it's not our collection's person calling.  
21 It's a voice response.

22                   So we'll program the telephone number

1       and the voice response would call the customer  
2       and say, This is a reminder that your bill is  
3       past due. We will take action, if necessary.  
4       Give us a call.

5               And at this time, there's -- we haven't  
6       gotten on a consistent schedule for doing that.  
7       That's where we're at right now.

8       MR. KELLY: No further questions.

9       JUDGE GILBERT: Okay. Recross solely within  
10      the scope of the redirect?

11      MR. ANDERSON: No recross.

12      JUDGE GILBERT: Thank you, Ms. Timko. Okay.

13      MR. KELLY: Could we go off the record, your  
14      Honor.

15      JUDGE GILBERT: Okay.

16                       (Whereupon, a discussion  
17                       was had off the record.)

18      JUDGE GILBERT: Let's go back on the record.

19               We have one witness left, who is  
20      Ms. Burgess for SBC. It is now 5:20 and too late  
21      to try to complete our presentation of her  
22      testimony and cross-examination tonight.

1                   So we will adjourn until 10:00 a.m. on  
2   Monday, and we'll complete our presentation of  
3   her testimony then, and I hope to mark the case  
4   as heard and taken in the morning to be done at  
5   the absolute latest by lunchtime.

6                   Does anyone else anticipate anything  
7   other than dealing with the testimony of  
8   Ms. Burgess?

9           MR. LANNON:   Nothing here.

10          JUDGE GILBERT:   Any motions on the horizon  
11   right now?

12          MR. ANDERSON:   No.

13          JUDGE GILBERT:   Okay.   And we already have our  
14   briefing schedule, which shall remain intact.   In  
15   fact, how far does out schedule go?

16                   We have it all the way through the end  
17   don't we?

18          MR. KELLY:   Yes, your Honor.   December 2nd to  
19   you by 10:00 a.m.

20          JUDGE GILBERT:   Right.   I've got it.   Okay.

21                   So we're fine.   Let's get this done on  
22   Monday, and let's quit for today.   Thanks a lot.



1                   (Whereupon, further proceedings  
2                   in the above-entitled matter  
3                   were continued to October 27,  
4                   2003, at 10:00 a.m.)

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